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COUNTY OF ALAMEDA

EVALUATION OF

**PROBATION
SERVICES**

FINAL REPORT - JUNE, 1977



**OFFICE OF
PROGRAM EVALUATION
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OAKLAND, CA. 94612**

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Matthew J. Golden, Director

Peter Henschel, Assistant to the Director
and Team Leader

OFFICE OF PROGRAM EVALUATION

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ORGANIZATION OF THE REPORT

The evaluation of Alameda County Probation covers three major areas: the overall management of the Department, the Adult Investigation process, and the process and outcomes of adult supervision. Each of these areas are discussed in Chapters II, III, and IV, respectively. Chapter I relates the conclusions and recommendations of these sections to an overall picture. A series of proposals are made in light of our most basic findings and conclusions.

This report does not, by design, cover the specific details of our methodology, our assumptions, or all the specific findings. To do so would have burdened the Board, the Courts, and the Department with an unacceptable reading requirement. Instead, we refer you to our workplan for the evaluation (presented to the Board of Supervisors in November, 1976) and the Appendix. The extensive Appendix includes the basic approach, specific methodology, and data results of each of twenty-two tasks that comprised the evaluation. Extensive cross-referencing is made to the data in the Appendix. We encourage your review of the data results as provided in the Appendix and invite your questions.

CHAPTER I

WHAT IT ALL MEANS: ASSESSMENT AND PROPOSALS

I. WHAT IT ALL MEANS: ASSESSMENT AND PROPOSALS

This evaluation covers many issues, raises many problems, and answers a number of important questions. Our analysis identifies some important issues which must be resolved for the Department to be effective in meeting its responsibilities to the Courts, the Board, and the citizens of Alameda County.

The Major Findings

The purpose of this section is to present the most important findings and conclusions of the report and to place them in perspective.

The picture is mixed and sometimes contradictory. Many of the concerns we raise in our findings go far beyond the responsibilities or role of the Probation Department. Although the findings in all three areas point to some serious problems, some are very positive, encouraging, and unusual. We will examine each area separately and then provide an overall assessment.

1) Management

There is a degree of staff frustration, alienation, and malaise within the Probation Department which is critical; it affects the ability of the Department to effectively and efficiently provide services to the court and to probationers. The symptoms are serious; but the causes can be either eliminated or their effects greatly reduced.

We conclude that the key factors are:

o Confusion over Direction

What is Probation's main purpose?

Our Probation Department tries to be all things to all people. In the

absence of clear goals and priorities, Probation has attempted to satisfy all the major actors in the criminal justice system. The concern over goals is serious but also unique. *Many organizations function adequately without clear goals and objectives, but few are placed in the center of a "force field" of competing and contradictory interests to the degree we find Probation.* Is Probation's primary goal to serve the courts by providing information on defendants prior to sentencing? Is it to rehabilitate through attempts at offender reintegration? Is it, in contrast, primarily another arm of law enforcement designed to protect the community or more simply, is it a less expensive alternative to jail or prison? Although the Probation Department often states that these goals are interrelated and inseparable, we contend that they represent, on the contrary, *very real* choices that imply differing service delivery systems. The challenge will be to confront these choices, address the dilemmas implied in each, and move toward a resolution. *WHY?* The lack of clear purpose has levied a heavy cost on Probation and has reduced its influence in the criminal justice system. Specifically, the lack of clear goals and the presence of multiple and often conflicting demands foster confusion and anxiety over what Probation's staff should be doing. This uncertainty has also reduced the willingness of probation managers to take risks and to initiate or advocate for staff needs, new programs, or new approaches to traditional problems.

Much of what we observed and documented in the pages that follow flows out of a few interrelated pressures. First, the role of corrections in the criminal justice system is being questioned. Criticism is focused not only on the issue of goals, but on society's obligation to assist

people in need and the nature of people who commit crimes. As the profile of adult offenders becomes increasingly hard-core and serious, society's response has been to emphasize the need to protect communities rather than worry about the needs of offenders. Our poll of Alameda County citizen attitudes toward and expectations of Probation underscores this trend.

Anxiety over crime and the need for protection is not the sole source of our present concern over Probation. The 1960's saw a significant rise in the development of social services to meet the needs of offenders. The assumption underlying this change was that an offender's environment predicated an offender's behavior; fix the environment (provide client-oriented services) and you will affect the offender's behavior. This philosophy resulted in a major investment in providing caseworker service to persons placed on probation or parole. The goal became rehabilitation and social scientists began to evaluate the results. The results were mixed, at best, and generally frustrating to those working in corrections. Rehabilitation appeared to be an unmeasurable, if not unattainable, goal for many offenders; most strategies did not seem to affect criminal behavior. Meanwhile, the discouraging results were absorbed by probation officers who were hired under the assumptions of rehabilitation, practiced their skills on a daily basis, and believed, quite naturally, in the value of counseling and therapeutic services to offenders.

The shift away from rehabilitation began a few years ago and has now taken on less subtle trappings. Recent pieces of legislation at the state level clearly imply a renewed focus on community protection rather

than offender rehabilitation: SB 42 has reduced the discretion of judges in sentencing, AB 3121 implies a protection goal for serious juvenile offenders, and the experiment of Probation Subsidy is in serious trouble. These are significant signs of society's disillusionment with rehabilitation as a primary goal of probation and parole.

No Probation Department in California is immune from these changes. Our Probation Department is no exception. The fact is that Probation is at a cross-roads and the directions are not particularly inviting to many who work in the field. *The confusion over roles has clearly diminished the Department's chance to function as an equal contributing partner within the criminal justice system.*

The Probation Department is directly accountable to two bodies: the Superior Court and the Board of Supervisors (through the CAO). We believe that this "dual accountability" pulls on Probation in conflicting ways and, in effect, prevents the criminal justice system as a whole in the county from identifying goals.

Specifically, the Department must respond to the courts for direction and program changes and to the CAO for the funds to finance the desires of the Bench and the Department. Under these conditions, Probation managers have behaved in ways designed to avoid confrontation. A premium is placed on stability and accommodation. As a result, Probation is not a visible program from the vantage point of the Board of Supervisors, nor is it seen as an innovator, given the dilemmas we have discussed in terms of confusion and anxiety over goals. Dual accountability has only served to discourage the development of a clear direction for Probation.

It is under these constraints that the Probation Department manages its own affairs and deals with the county's total criminal justice system. It is also in these areas that one finds many strengths in the Department and some disconcerting weaknesses. Specifically, the Probation Department has:

- taken the initiative in establishing coordinating efforts among various agencies,
- maintained excellent relations with the CAO and most judges,
- fostered training and career development within the Department,
- encouraged the dissemination of information to staff through use of minutes, conferences, and task forces,
- been a model department in forecasting needs, planning for new programs, and allocating resources.

However, the following areas warrant improvement. Some can be resolved entirely within the Department while others require cooperation from the courts.

- Adequacy of Staff Supervision

Although the Department places an emphasis on staff supervision, most field deputies find the supervision they receive to be of little relevance to their job. In addition, the roles and responsibilities of the Department's first and second level supervisors are unclear to staff and to the supervisors themselves.

- Beyond personal satisfaction, there are no incentives to perform; there are few rewards for excellence or innovations and few sanctions for incompetence.

- Presence of Mixed Signals

The confusion and anxiety over goals and directions for probation and dual accountability have had some significant side effects within the Department in its relationship to staff: Although the day-to-day emphasis appears to be oriented toward service to the courts and public protection (revocations and progress reports), training continues to focus on treatment alternatives, counseling and other skills directed toward rehabilitation.

Staff do not receive coherent or stable guidelines from the courts; procedures change continuously.

These factors are part of a pattern that is affected by the major dilemmas in Probation discussed above and the fact that the Department is receiving tougher and more serious offenders than a few years ago. These cases are less amenable to past strategies of supervision.

We believe that these factors - when examined together - combine to create an environment in which there are few incentives to innovate, take risks, or perform beyond a level that "meets requirements." In fact, there is some evidence to suggest that many staff feel a passive hostility that is directed primarily towards "Administration" but, in reality, involves many factors that the Department itself cannot control or even influence.

We feel that there are serious problems in the present dual reporting relationship for Probation. In light of our findings, we explored the relative advantages and disadvantages of the present system (with modifications designed to clarify goals and establish priorities) versus three other options. In the section on Management in this report, we explore the present situation, with modifications, versus Probation operating 1) under a Board of Directors made up of Superior and Municipal Court judges; 2) as several mini-departments, each reporting to the presiding judge of each judicial district; or 3) directly under the Board of Supervisors (CAO) completely independent of the judiciary. Each option was carefully examined according to the probable effects each would have on budget, politics, goals, program/services, organizational structure, and employee relations. Our evaluation suggests that modification of the present situation poses fewer costs than movement to any of the other choices. Although we suggest that the present accountability relations be maintained,

we feel that the judiciary and the Board should explore the other options as well. If the decision is to maintain the present system, we suggest that the judiciary and the Board address the following recommendation:

The judges of the Superior and Municipal Courts - in concert with the Probation Department and the Board of Supervisors - must determine what the primary business of the Probation Department should be. Agreed upon priorities should be established and these priorities and choices should be clearly articulated, not only to the Probation Department and the rest of the criminal justice system, but to the community as a whole.

Although we feel there is a great need for this dialogue, in light of our evaluation and proposals, it is easier to state than to achieve. We recognize this and recommend that the dialogue and agreements be accomplished through one of the following procedures that utilizes the results of the evaluation.

- OPTION 1: A dialogue between judges and the Board be undertaken through the public hearing process after the evaluation has been formally presented and received by the Board;
- OPTION 2: A report be presented on goals, priorities, and proposals to the courts and the Board of Supervisors based on the judgments of an AD HOC Committee of judges and Board members;
- OPTION 3: The Probation Department formally present a set of choices for review by the courts and the Board of Supervisors within three months of the presentation of this report;
- OPTION 4: The Probation Department discuss specific goals and priorities with the bench and secure basic agreements. The product of this process should be reported to the Board of Supervisors for information and discussion;
- OPTION 5: The County Administrator function as an intermediary between the courts and the Board to gain specific agreement on priorities;

OPTION 6: The judges of the Superior and Municipal Courts develop a process for informing the Probation Department of the goals and priorities they expect the Department to follow.

The six options above are ways to accomplish the dialogue that we feel is necessary in light of our findings and recommendations. Each, in different ways, recognizes the separation of powers by explicitly placing the courts in the role of overseer of probation services. Each option also recognizes the ultimate "power of the purse" and the resulting need to make the Board of Supervisors and CAO ancillary partners to the dialogue that must take place.

Regardless of the option chosen, we suggest that a formal Memorandum of Understanding be developed and approved by the Superior and Municipal Courts and the Probation Department as the tangible product of this process. We also suggest that this memorandum be reviewed on an annual basis.

We believe that these suggestions can make our recommendations workable.

2) INVESTIGATION OF ADULT DEFENDANTS AND PREPARATION OF REPORTS TO THE COURTS

\$1.9 million is presently spent in general funds to produce adult pre-sentence reports to the courts. The reports are generally of undistinguished quality and of limited utility to the Bench. Many of the concerns raised in this area can be eliminated through verifying information in the reports, providing more "quality control," and increasing the degree of analysis of alternatives to incarceration. Past experience indicates that the Probation Department will readily respond to these challenges. However, a basic issue remains that supercedes all concerns over report quality: Plea and sentence bargaining has thwarted the effective use of the information prepared by

the Department. Knowledgeable sources throughout the Alameda County criminal justice system estimate that *over 90 percent of all cases referred to our courts are negotiated prior to sentencing*. Due to the timing of nearly all plea/sentence bargaining sessions, judges, district attorneys, and defense counsel receive the probation report *after* major decisions have been made. Thus, the court report that is ideally designed to inform decisions on a case *prior* to sentencing is of marginal value. We face a very serious situation: Under present circumstances, we not only waste most of our county's \$1.9 million investment in court reports, but we also: 1) reduce the quality, amount, and objectivity of information that reaches our judges, and 2) undermine the morale of the deputies who must prepare these reports. Not only are present reports unavailable when most needed, but critical data in them is often unverified and unanalyzed when it does arrive. The present situation is particularly serious since probation reports will be increasingly important in felony cases under the new determinate sentencing law.

Plea and sentence bargaining is a reality of our criminal justice system; the reasons for its existence are compelling. Our concern here is not with the practice of negotiated pleas and sentences; the issue is the need for information on defendants beyond that which surfaces in the adversary process. To ignore the present effects of plea/sentence bargaining on informed dispositions, reasonable referrals to probation, and staff morale, is to ignore most of what adult probation does in Alameda County.

3) THE SUPERVISION PROVIDED TO ADULT OFFENDERS PLACED ON PROBATION

The results of our extensive examination of probation supervision are noteworthy and often surprising. The practice of supervising adult offenders is the crux of probation; the process is imbedded in the theories of rehabilitation, compassion, and the inherent values of those trained in the "helping professions." In many ways, Probation represents the opportunity for "a

second chance" and poses both a sense of relief *and* jeopardy in the minds of most of those who experience it. However, probation, like parole, is presently under serious scrutiny. The results of numerous studies of corrections, although not totally conclusive, clearly point to serious issues and question traditional assumptions regarding the value of supervision. In our analysis of the outcomes of adult supervision and the process used to supervise offenders, we discovered many things that are basic to the rationale for probation.

Our proposals for adult supervision are based on a number of these key findings and conclusions from the intensive three-year, follow-up analysis of a random sample of probations granted in 1973, plus our observations, surveys, and interviews relating to the present process. The key findings and conclusions are:*

The focus, purpose, and tenets of probation supervision are unclear to judges, probation officers, and other elements within the criminal justice system. No single party is willing or able to state what supervision is and what it is not. Services are provided without clear expectations about what is or should be accomplished.

Probation is drifting. The ambivalence over supervision that comes out clear in our evaluation is fostered by a lack of clear direction or guidelines to assist in making difficult choices. At the level of day-to-day supervision, the most important area of discretion involves the choice between community protection and rehabilitation as the objective of supervision. Either choice must be "traded off" against such factors as workload, staffing and conflicting expectations.

A number of effects are noticeable when no realistic framework for choice exists. We see these effects demonstrated in our data on both the process and the outcomes of supervision.

* Detailed support for these findings appear in Chapter IV - Adult Supervision and in the Appendix, Chapter 22.

1. Process

A. Intensity

- Probationer-related contacts for our follow-up sample average 1.5 times per month, regardless of type of offender, offense, caseload, service provided, or period in the probation term. This pattern may result from "workload evening" in the face of increasing administrative demands and high caseloads.
- There is little incentive to increase or reduce the intensity of supervision services during the period of a probation, despite clear patterns of violations.

B. Focus of Selection

- The factor which bears the strongest statistical relationship to the focus of services provided to individual probationers is not history of criminal involvement, but personal factors. We submit that in the absence of dual policies on the focus of service, there are strong personal and professional incentives for deputies to select for services probationers who are considered "workable." This pattern is consistent with a concern for rehabilitation, but not necessarily consistent with an immediate concern for public protection.
- Eighty percent of all supervision activity in our sample is monitoring. Only 20 percent of the services provided are oriented toward counseling of an offender or toward assisting in connecting a probationer to a program related to a specific need. There does not appear to be consistent or widespread use of community resources *during the supervision process*. This implies an emphasis on direct provision of services by the department even though the realities of staff budget limitations make delivery of specialized services difficult.

2. Outcomes

Forty-three percent of our sample completed their probation without any violation. Another 24 percent completed probation even though they committed new offenses or violated other conditions of their probation. A remaining 33 percent clearly failed to complete their probation, and were revoked for new offenses or violations of conditions of probation.

Was Probation successful in 67 percent of these cases or in only 43 percent? The answer lies in how we interpret the middle group who completed probation even though they committed new offenses or violated other conditions of probation. The discretion of the probation officer and the judge define, in fact, the outcomes in these cases. If the probation officer lets a violation slip by because it is minor or because it is not worthy of a revocation, is that probation a success or a failure? *Discretion is important and necessary; when it is exercised in the absence of guidelines based on goals for probation, it loses its primary purpose.*

Outcomes may be attributed either to enforcement (what you see is what you report) to interactions between deputy and probationer, or to characteristics of the probationer himself which the deputy cannot control. Our findings deal with the relative importance of these factors in determining outcomes.

A. Enforcement

- The actual enforcement of "community protection" (detection of law violations) appears to be done more by law enforcement agencies in the early stages of probation than by deputy probation officers.
- The longer a probationer remains on probation, the less likely it is that he will be rearrested, but the greater the probability that his probation will be revoked. The greater likelihood of revocation is most likely due to a reduced feeling of jeopardy; thus, the defendant becomes lax in fulfilling probation conditions (such as paying fines or restitutions) or reporting to the probation officer. The likelihood of new offenses falls after the first year on probation.

B. Interactions

- Persons who receive primarily counseling while on probation are *less likely* to complete probation without any reported violations than are individuals who receive an emphasis on direct monitoring.
- Direct monitoring of probationers (surveillance, "checking-up," etc.) is the single activity that probation officers can provide that shows the sharpest, overall, positive relationship to successful completion of probation.
- There are large areas in which the outcomes of supervision are largely a function of discretion either by the courts or by individual supervision deputies.

The probationers who complete their probation *despite* reported violations are the group in which the discretion of the probation officer has the greatest influence on observed outcome.

C. Probationer Characteristics

There is strong evidence that the *characteristics of the probationer* are the primary determinants of *who "succeeds" and who "fails"* on probation.

High risk, serious offenders are likely to fail probation while low and medium risk probationers are likely to complete probation *regardless* of the type of service provided or the type of caseload in which they are placed. This conclusion is not only based on our findings but is firmly founded in research performed throughout the United States.

D. Organization

Physical separation of the investigation and supervision functions provides disincentives for use of court reports and evaluations as a basis for supervision planning. Similarly, separation makes feedback between investigators and supervision deputies difficult. Therefore, a potentially valuable "continuity of knowledge" about the probationer and his needs is lost.

E. Perceptions of Influence

Thirty-eight percent of all supervision deputies feel that they have little influence - in most cases - over the offenders they supervise and particularly over repeat offenders or those with a history of serious crimes.

Summary

The key summary finding is: *offenders probably succeed or fail more on the basis of their personal characteristics than on the basis of any services they received through probation.* However, this does not mean that the intervention by a DPO to provide a service to a probationer is *never successful* in providing incentives or opportunities for some probations to succeed. We know that the right services, at the right time and circumstances, *can* help many offenders. However, the literature on corrections is overwhelmingly in agreement that the key factor is the *motivation* of the probationer. It is as pointless to barrage hardened offenders with services as it is to provide services to offenders who, in reality, will probably not commit any new offenses. These findings underscore the value of monitoring defendants versus providing counseling-type services through the Probation Department for nearly all persons placed on probation.

At present, the unfocused discretionary nature of probation supervision not only confuses probation officers and judges, but it also represents a great potential for selective enforcement of probation conditions. Selective enforcement can become the product of an absence of direction for adult probation.

Many of the findings and conclusions recited above point to a single critical problem: *The pressures are enormous on Probation to try to satisfy each of the many actors in the criminal justice system and serve the needs of each judge and the Board of Supervisors (CAO). The results are unclear direction, a reactive management posture, confused signals to staff, and major anxiety over what, in fact, Probation should do, for whom, and with what.*

*We must begin to recognize that Probation cannot be all things to all people; it cannot be expected to rehabilitate and protect society with equal focus. The courts cannot continue to rest comfortably on what probation supervision they think is occurring. If court reports need strengthening, something else must be traded off. The time has come to make choices. The courts are demanding it, the Department needs it, and Alameda County citizens clearly desire it.**

In the next section, we propose a challenge that recognizes present realities and maximizes the value of probation as it affects adult offenders.

THE CHALLENGE: A NEW ORIENTATION FOR ADULT PROBATION

The analysis of adult investigation and supervision has highlighted a number of issues involving the structure and focus of probation services in Alameda County. We have identified areas in which important policy decisions must be made. Most important is the need for a clear statement about what probation is in business to do. OPE maintains that the overriding priority of probation services should be the *protection of the community*. This is the position embraced by the legislature, the public, most judges, law enforcement, and even the Department's most recent statements. However, we also recognize the importance of ensuring the availability of services to probationers who have the *desire* to succeed on probation and who need assistance to gain access to community resources. At

*Based on the OPE poll of Citizen Attitudes Toward Probation in Alameda County.

present, the Alameda County Probation Department is not appropriately designed and structured to accomplish *either* of these objectives.

We propose a model through which adult probation services can effectively meet the primary objective of community protection and the brokering of services to those probationers who are motivated to receive assistance.

Our proposal is based upon the results of the evaluation and our analysis of trends in other jurisdictions. The major aspects are discussed below:

ADULT INVESTIGATION: STRENGTHENED, SUPPORTED, AND ALLOWED TO INFORM JUDICIAL DECISIONS

We propose that adult investigation become the cornerstone of probation services.

In order for this to occur, a number of key actions must be taken¹:

- A. The utility of adult pre-sentence reports must be increased or the county's investment must be reduced to meet only the minimal legal requirements.

The timing and quality of adult investigation reports is severely limited due to court backlogs and the timing of plea-sentence bargaining. \$1.9 million in county funds is spent to provide them. Although court reports do assist some judges in making decision on the precise outline of a sentence and also help probation officers in making initial decisions on defendants placed on supervision, the basic purpose of court reports is not adequately met. New state requirements for felony cases make the present situation critical. No single solution exists, however, a number of alternatives should be considered by the courts, the Probation Department, the Board of Supervisors, and the CAO. Specifically:

- 1) *Formal automatic notification of the results of plea/sentence negotiations should be made to those probation officers preparing pre-sentence reports, so that the court report can relate specifically to the probable sentencing choices.*
- 2) *Selective submission of "pre-plea" reports to court should be encouraged where approval is obtained by the judge, the defendant, defense counsel, and District Attorney. Reports filed prior to or at the time of negotiations clearly maximize the value of the information prepared by the Probation Department. Although present state law permits the use of pre-plea reports, the content of the reports needs to be restricted to background information on the defendant.*

¹ Each item below is discussed in detail in Chapter III - Adult Investigation and in Sections 4, 5, 7, 16, 17, and 21 of the Appendix.

- 3) *The Courts should establish clear guidelines regarding their needs for pre-sentence information.*
- 4) *"Letter reports" and "short forms" should be introduced into the Municipal Courts as the primary source of adult pre-sentence information. The precise outlines and content should be negotiated between judges and the Department.*
- 5) *Where possible, the present information available to the court prior to conviction should be briefly enhanced. An option might be a brief statement from probation regarding defendants' probation history. CII reports (rap sheets) and arrest reports should be more legible and timely for plea/sentence negotiations.*

IN SUMMARY:

- 6) *Unless significant steps are taken to increase the utility of adult probation pre-sentence reports to the court, OPE recommends that they not be produced unless specifically requested by the court. Where requested, we recommend that specific alternatives be considered, including use of letter reports and short forms. Where complete R and S reports are required by law or requested, we recommend substantial improvements in report quality.*

B. These proposed changes will not be valuable or accepted by the courts unless:

- 1) *Information provided in court reports is verified (or the judge, at least, knows what information is not).*
- 2) *A process for speeding up the collection of data is developed.*
- 3) *Defendant interviews are scheduled sooner after conviction and judicial sanctions are levied against defendants who fail to comply.*
- 4) *Information is analyzed and evaluated so that realistic and creative alternatives are presented. We propose that the new reports not only provide specific alternatives to a judge, but also specify the precise limits of supervision if probation is ordered. This would be based on a classification of defendants prior to sentencing. Classification and determination of service needs at this early stage recognizes and exploits the fact that a defendant's feelings of jeopardy are most likely greatest prior to sentencing.*
- 5) *Adequate quality control is established with sufficient time allowed for review by unit supervisors prior to submission to the courts.*

- 6) *Seasoned, experienced probation officers are enlisted for this task through open competition for positions in a new deep class (DPO III) position. The creation of the new class will increase the status and morale in the Department and is commensurate with the responsibilities we expect the new job to include.*
- 7) *Paraprofessionals are used as assistants to collect and verify data as part of the new process.*

Under these conditions, we expect major improvements in the quality of information available to the courts and a dramatic increase in the morale of probation officers assigned to investigation activities.

ADULT SUPERVISION: EMPHASIS ON COMMUNITY PROTECTION, PROBATIONER MOTIVATION, SELECTIVE AND STRICTLY LIMITED IN SERVICES AND DURATION

We propose that adult supervision be designed in recognition of community protection as the primary goal. Our findings in adult supervision have led us to recommend a program based on the impact of present supervision, especially the practical realities of what activities are appropriate for specific types of offenders.²

Specifically, we recommend that supervision be designed along the following lines:

Supervision Equals Monitoring

Monitoring of a probationer's activities is the activity that constitutes probation supervision. The emphasis on monitoring separates the probation officer from the prior dual role of "cop and counselor," and specifically, from the confusion over the objectives of supervision.

² Each item below is discussed in detail in Chapter IV - Adult Supervision and in Sections 3, 5, 7, 20, and 22 of the Appendix.

Probation Services: Brokering to Community Programs

Assistance to probationers consists of skilled referrals to community-based and county programs. Under this model, rehabilitation-oriented services are discretionary and based exclusively on two criteria:

- Has the judge ordered a specific client-oriented condition that requires the use of community resources?
- Is the client sincerely motivated to benefit from brokering services?

Under either or both circumstances, our recommendations place a high priority and investment in providing skilled brokering and referral services. We intend that this service should be provided by experienced DPOs who understand community resources and can be trained in efficient and effective brokering. It is important to remember, however, that brokering services would be provided only under the two criteria listed above; supervision activity denotes monitoring *only* in all other cases.

Classification of Probationers: Who Gets What:

The results of our analysis clearly point to the need to classify probationers by the degree of risk they represent to the community. We believe that a classification system will allow the Department to channel probationers into direct and indirect monitoring and brokering. We recommend that the classification of defendants be completed during the investigation process so that the decision on what supervision will involve for a defendant is available to the judge at the time of sentencing. This classification process is integral to the entire proposed adult probation process. The Adult Division's recent classification proposal is an encouraging initial step.

Duration and Intensity of Supervision: Up to Six Months or "Banked"

Once a defendant enters probation supervision, he will enter one of only two categories, based on the classification (high, medium, or low risk), the DPO and the judge. We propose the following alternatives based on our evaluation:

- 1a) All of those individuals who are in the "low risk" category and most who are in the "medium risk" group should be placed immediately into one of a number of "probation banks." Case-load banking recognizes the fact that in most cases, these individuals will succeed on probation regardless of any intervention by probation. We recognize, however, that this group will have certain conditions of probation such as fines and restitution payments that must be monitored. We suggest that this indirect monitoring can be accomplished through scrutiny of reports from Central Collections and through simple reporting to the Department by mail. Postcard reporting at set intervals by minimal risk probationers is an established activity in many probation departments throughout the country. We believe it can work well in Alameda County. Any individual in a banked caseload has an opportunity to receive assistance with community services through brokering help from a probation officer. However, the request for assistance must come from the probationer; once received, assistance would be provided. Routine flag notices would be created to allow for periodic review. This would allow for early terminations, revocations, or modifications for persons in a "bank."
- 1b) Increased use of court probation by judges is an additional proposal that relates to our findings. Many of the "low risk" probationers we identified would probably succeed either on formal probation - as a banked case or on court probation.
- 2) Most of those individuals that are identified as "high risk" and many of the "medium risk" defendants would receive intensive monitoring for a set period of up to six months from entering probation supervision. During this period, maximum attention would be placed on determining whether an individual is in compliance with conditions of probation. If brokering services are required due to a specific condition of probation (e.g., "attend a drug program" or "seek employment"), they would be provided during this period. Any requests for service that evolve out of genuine motivation expressed during the investigation process would be honored during the six-month period. At the end of six months, the Department would make a decision on each case.

The only primary constraint would be that the probationer could not, except in rare circumstances, remain on the regular caseload. Recommendations would include: banking, early termination, revocation, or modification of probation. We anticipate that most cases would go to the bank where indirect/ administrative monitoring would take place. Each team (see below) would supervise a large bank of approximately 600 - 1,000 cases.

Intensive focusing on the probationer and his needs early in the probation process confronts the defendant at the time in which he is in greatest jeopardy and is most highly motivated to change. He receives further incentive toward constructive change from a clear statement about what supervision will be and for how long, with provisions for shortening the process given the appropriate behavior.

ORGANIZATION AND STAFFING:

COMBINED SUPERVISION AND INVESTIGATION - STAFF WORKING IN SMALL RESOURCE MANAGEMENT TEAMS USING PARAPROFESSIONALS

Traditionally, supervision and investigation services are provided by separate staffs working in isolation and on an individual basis. This is how services are provided in Alameda County, with the exception of the combined caseloads in South County.

We propose that one-to-one service be eliminated and that services be provided through teams of up to eleven individuals that include: investigators, supervision deputies, and probation aides as paraprofessionals. Specialized caseloads, as we know them, would not be necessary as services would be predominantly oriented to those in need as defined in the investigation process. The team will be directed by a unit supervisor and function as a formal working group. By combining investigation and supervision services, the team will not only inform the recommendations for the pre-sentence reports but will also provide assistance to proba-

tioners in receiving community services. Attached to the team would be probation aides who would have primary responsibility for on-going supervision (monitoring) of defendants. Each team would function as a tight, integrated unit: A court referral, for example, would be handled by an investigator on the team. The investigating DPO would seek advice on how to classify a case, what community resources might be needed, and what level of monitoring would be necessary ("Do we recommend banking this case?"). Supervision deputies on the team would be the persons most knowledgeable about community resources. Probation aides would be the main providers of supervision (monitoring) as well as providing initial data-gathering assistance to investigating deputies on the team. Experienced supervision deputies might supervise their initial work on cases and, in some instances, may conduct initial interviews. This system minimizes the problems involved in servicing large, single-person caseloads while providing greater information to deal with specific problems. It allows for servicing the brokering needs of any person on the regular six month or banked caseload while continuing adequate monitoring regardless of vacations, illness, or other absences, since personal supervision caseloads would no longer exist.

Our proposed team concept is a significant departure from the present structure for adult probation; it can be the cutting edge of a more effective probation program. It recognizes some basic, harsh realities. First, specialized services and special attention caseloads do not appear to affect the outcomes of probation supervision. Second, personal caseloads and casework are not effective ways of dealing with offenders in the community. Third, intensive monitoring does appear to increase community protection and is an investment that does not usually require the use of specially trained professional probation officers. Fourth, paraprofessionals can provide valuable assistance to the investigation and supervision process. Fifth, the role of the experienced probation officer should shift from

Community Resource Management Teams (CRMTs)

How It Would Work



1) DEFENDANT CONVICTED

Request Pre Sentence Report →

← Receive Report

- 1) "Work Up" on Defendants
- 2) Recommend for/against Probation
- 3) Classification of defendant Hi
Medium
Low
- 4) Definition of needs
(What will supervision be?)



2) SENTENCE

← Jail or
Prison

TO PROBATION →

OPTIONS:

- 1) Direct to bank - indirect monitoring
 - 2) Six months monitoring (direct
indirect)
 - 3) Brokering to community services
- IF: A) Condition of Probation
B) Defendant is motivated



3) BACK TO COURT

← VIOLATION OF PROBATION

OPTIONS: - Revoke and Re-instate
- Revoke and Sentence

← Jail or
Prison

← MODIFICATION OF PROBATION

- Add/subtract conditions

← GOOD BEHAVIOR

TERMINATE
PROBATION
EARLY

→ TO BANK

PROBATION

C

R

M

T

B

A

N

K

the often routine monitoring of probationers to a role that places explicit value on the expertise many DPOs have in understanding and using community resources. Under this proposal, the probation officer is not expected to provide rehabilitation services, but rather to skillfully match up and direct a motivated probationer to the services available in the community. This approach recognizes that traditional casework-counseling is most often ineffective with offenders, especially if their needs are very concrete. Offenders may need drug or alcohol treatment, a job, vocational training, proper housing, or remedial education. This proposal places top priority on brokering for these services when an offender is motivated and identifies the experienced probation officer as the person most qualified to successfully do this often difficult job. *Under this structure, the probation officer becomes a manager of community services.*

Although the team concept, as we have described it, is an innovation, the basic design has been recently tested in eleven county and federal probation departments across the country, including Monterey County.* The teams are called Community Resources Management Teams (CRMT). No clear evaluation results have been reported; however, trends point to a reduction in recidivism, an increased use of community resources, and reduced cost. The results from the initial pilot project in Salinas, Monterey County are very encouraging.

A change of this nature requires a basic restructuring of probation services. This shift runs counter to the personal, professional, and organizational values of most people who work in corrections. It does recognize, however, the ever-increasing evidence that *probationers need casework services less and community*

* Eleven pilot projects have been supported through the Law Enforcement Assistance Administration (LEAA) through the National Institute of Corrections. The present program is being implemented through technical assistance by the Corrections Program of the Western Interstate Commission for Higher Education (WICHE) in Boulder, Colorado.

services more. Nevertheless, the staff and organizational changes involved will challenge even the most progressive administrator. We hope and believe that our Probation Department will meet this challenge. It will require a commitment of the entire Department to make it work. We believe that the benefits will far outweigh the initial concerns and natural resistance to change.

ACTION STEPS

Our evaluation raised a number of serious issues that pose opportunities as well as challenges to the Judiciary, the Probation Department, and the Board of Supervisors. The major action steps needed to implement the OPE proposals are described below:

A. The Judges of the Superior and Municipal Court, the Board of Supervisors, and the CAO

You will have to make a number of significant policy decisions to establish the basis for implementing the significant changes contained in this report. The recommendations and options contained in the preceding pages, in effect, eliminate adult supervision as presently designed, place a new critical but selective emphasis on investigation functions, and call for a modified approach to the role and operations of Probation within the criminal justice system. The latter first involves the courts in basic policy decisions and secondly, defines the Board as a major participant in fixing and supporting a clear purpose and direction for Probation. The policy issues are described on the following pages and are presented in light of program-wide management, Adult Investigation, and Adult Supervision processes and results. They will appear before the Board regardless of the shape of the implementation plan proposed by the courts, and prepared by the CAO and the Probation Department. In fact, the implementation process in this evaluation should be preceded by a series of policy decisions by the courts and your Board.

Specifically, our *Conclusions* and *Recommendations* require that the courts - in concert with the Probation Department and the Board:

Management of Probation

- 1) Determine which basic philosophy should characterize our Probation services and what goals it should pursue in dealing with offenders. Is it:
 - Protection of the public
 - Rehabilitation
 - Information services to the Courts
 - Or some modification of the possible choices discussed in this report.

- 2) Make the ultimate decision as to what role the Probation Department should play within the criminal justice system and the CAO/Board and particularly what posture it should adopt with respect to other major elements in the system. Among the choices which will be discussed are roles which:
 - define Probation as a supplement to law enforcement which leads to operating purely as enforcement with offenders on probationary status.
 - place Probation in a subservient role to the courts where the basic mission is to satisfy the individual requirements of each jurisdiction with respect to the investigation and supervision of offenders.
 - place Probation as a regular county department with strong "line" ties to the County Administrator and Board where Probation's program is reviewed for fiscal rationale and in the context of the total criminal justice system.
 - establish Probation as a professional, independent and self-sustaining element of the criminal justice system with clear specified goals and with a well understood role with respect to offenders placed on Probation by the Courts.

- 3) Recognize that Probation is at a cross roads and is having difficulty in deciding which "drummer" it should hear. Resolution of the above two policy decisions is therefore an absolute necessity.

- 4) Resolve problems of dual accountability resulting from Probation's ambivalent requirement that it respond to the Courts and the County Board (CAO) by:
 - examining thoroughly the options discussed in previous sections of this chapter.

- weighing the political, administrative and service costs and benefits of each approach.
 - making a selection of one of the proposed alternatives and, if it is to maintain the present system with modifications, completing those actions necessary to produce an effective Probation delivery system. This will require dialogue between the courts, the Board, and the CAO.
- 5) Using the preceding actions as a basis, approve an implementation plan which addresses the management problems within the Probation Department.

Your decisions in the above areas will establish a purpose and direction for Probation; define the basis for the Department's relationship with other parts of the criminal justice system; provide the opportunity for the Department to clearly state its position in relation to the conflicting interests within the system and in the face of a clear public demand for community protection; and finally, establish the rationale for the Department addressing internal management issues. Once accomplished, a true test will be the ability of Probation management to maintain direction, defend its purpose when necessary, and lead its own staff.

The Adult Investigation Process

The recommendations for Adult Investigation will require that the courts create policy that:

- 1) Increases the utility of court reports and establishes selective use.
- 2) Establishes a system of continuous feedback from Courts to Probation on the quality and utility of investigative reports.

To implement recommendations on Investigation will require that your Board:

- 1) Allocate adequate resources to provide for analysis and the *verification* of information supplied in court reports.
- 2) Approve realignment of supervisory positions and job descriptions to ensure proper *quality control* of investigation reports and provide an adequate career ladder for Probation deputies involved in investigation.

These policy decisions can be made regardless of final decisions with respect to the recommended new approach to Investigation and Supervision. Investigation can be improved in this fashion regardless of its final role and placement in the total process.

Adult Supervision - Process and the Results

This part of our evaluation was designed to test the validity of Adult Supervision and to determine the relationship between what Adult Supervision does and what happens to offenders. Therefore, the impact of Adult Supervision, from the beginning, had the highest possibility for significant policy impact for the courts and the Board. It has realized its potential, and the results of our data and analysis leads to recommending the elimination of Adult Supervision as presently designed and presenting a new program configuration with alternative staffing and cost patterns. Essential to implementing any mix of choices are a number of policy decisions with respect to Adult Supervision. These will require that the courts and your Board:

- 1) Formalize that Adult Supervision (based on a public protection philosophy and goal) consists of monitoring clients on Probation to ensure Court directions are adhered to and to take quick consistent action in the case of new offenses or violations.
- 2) Establish "case banking" as a valid and appropriate method of handling certain categories of adult offenders.
- 3) Approve the policy of utilizing paraprofessionals in a variety of duties in Probation, specifically in monitoring the activities of probationers. Our proposal places the major supervision workload on paraprofessionals when monitoring is all that is required.

- 4) Establish brokering (referral of Probation clients to services outside of Probation) as a valid and needed part of Adult Supervision as long as it is initiated by request of the clients or indicated by conditions of probation. This brokering role for experienced probation officers recognizes:
 - a) the wealth of experience many DPOs possess; and
 - b) Alameda County's substantial investment in community programs.
- 5) Endorse the use of "the team approach" to delivering investigation and supervision services. The use of teams will increase efficiency and is a more appropriate vehicle, given our emphasis on monitoring and brokering. A variation of our proposal - The Community Resource Management Team (CRMT) - has been in experimental use in eleven jurisdictions throughout the country and poses many exciting challenges.
- 6) The model we propose for delivering Probation services places a heavy reliance on the use of community resources. Your Board should recognize that, in the short term, there will be significant "growing pains." Many community agencies have been less than enthusiastic about serving offenders in the past. We have to develop incentives for their cooperation and fully coordinated participation. Your Board will need to develop specific policies regarding who is responsible for contract funding selection, administration, monitoring, and evaluation. The positive results of our evaluation of Probation's relationship to community services argues for an expanded role for the Department in this area.
- 7) In addition, this approach poses new challenges for the Probation Department in inter-agency coordination and staff support during the transition from the traditional roles for probation officers. Past experience indicates that the Department will enter this new phase in good faith and with dedication. Full support from your Board and the Courts will be invaluable during this difficult but challenging period.

All the steps described above must be taken. The precise roles and relationships needed are less clear and challenge the separate branches of county government to work together.

For the Judiciary of Alameda County, the results of the evaluation and our proposals pose new opportunities as well as some challenges. The emphasis on adult investigation and shift in the focus and delivery of supervision

services recognizes the needs of the court for accurate, verified, analyzed and timely information; but it also makes quite explicit the limits of what we can expect Probation supervision to provide. The choices are very real. But they are based on information from many sources that go beyond this present evaluation. To make Probation services work, we place a premium on the need for members of the court to determine what the primary direction for Probation should be. We described a process in this chapter that has never really occurred before but could not be more timely or important. Although the dialogue we suggest is not common in Alameda County, a number of already existing structures could make the process happen. The Judicial Coordinating Committee, staffed by the Office of Court Services, is a natural forum for discussion of the specific elements of this report from the perspective of the Municipal Courts. The criminal bench of the Superior Court or the new Superior Court-Probation Committee are also possible options for the Superior Court to discuss the findings and recommendations of this evaluation. We hope the process can begin soon; there are encouraging signs that out of it will come a stronger Probation Department that can serve your needs and can also allow the Department to achieve "a place in the sun."

For the Board and CAO, the proposals presented above are a major departure from the present. They will allow the Department to function with a greater sense of purpose and with increased visibility. Although substantial budget reductions are possible with a number of the proposals presented, we believe the Department will eventually be stronger if the proposals are implemented.

B. The Probation Department

For the Department, the results of this evaluation are clearly mixed. We feel, however, that the inherent strengths in the Department are ample enough to carry through with the elements of our evaluation that represent substantial change. In many ways, the Alameda County Probation Department has more proven capacity to cope with change than any other agency in the county. The Department has shown its abilities in the past and will do so in the future. The high reputation the Department has earned state-wide is evidence of the potential for renewed innovation.

From our evaluation, the major challenges lie in the Adult Division. In the last eighteen months, the division has made dramatic strides in innovative management, has exhibited receptivity to change, and has expressed interest in initiating dialogue with the Courts and its own staff. One cannot ask for a better foundation upon which to build. Support from the courts and the Board will represent a new and exciting partnership. The signs are most encouraging.

BUDGET IMPLICATIONS

OPE has made a number of proposals in light of the findings in the evaluation. We have outlined the action steps necessary to realize the basic plan. This section briefly outlines the probable budget implications of these proposals.

The Problem of Uncertainty: Cost Savings - But How Much?

Customarily, OPE attempts to outline a precise estimate of the budget implications of recommendations made. In the case of this evaluation, estimates are exceedingly difficult to make, due to the large number of uncertainties that exist. Although the proposals we make will eventually mean substantial cost savings, we cannot be sure of precise figures until a number of uncertainties are resolved.

We initially developed six basic configurations for the Community Resource Management Teams that we propose. The number of variables that could affect the design of the teams precluded our providing them here as firm choices. We propose, instead, to state where we believe the greatest uncertainty lies regarding the costs of our proposals, but we also will state a number of cost possibilities as ranges for adult investigation and supervision activities as proposed in this report.

Specifically, the following are the major elements of uncertainty that, once resolved, will allow for firm budget estimates.

A) Adult Court Reports - Greatly Improved But Selectively Prepared

We make a number of key recommendations regarding the utility and quality of court reports that, by themselves, warrant substantial increases in the budget for Adult Investigation.

However, the critical cost variable is the courts' acceptance of letter reports and short forms, as well as willingness to place a person on probation without a report if a report is not necessary. The key uncertainties are:

- 1) To what degree will the courts - particularly the Municipal Courts - request:
 - a) any report;
 - b) letter reports or short reports; or
 - c) full pre-sentence reports?
- 2) To what extent will increased preparation of shorter pre-sentence reports mean less time is required to prepare reports? This is particularly difficult to guess since we make a number of quality recommendations that could conceivably require some additional time per court report to successfully implement.
- 3) To what extent will all investigation positions be filled with DPO IIIs and at what salary level? We suggest that the tasks as we see them warrant the new deep class for all investigators.

B) Adult Supervision: Re-focused and Greatly Restricted

We make a number of recommendations that, by themselves, essentially eliminate Adult Supervision as we presently know it and replace it with a new system that: 1) defines supervision as monitoring; 2) provides for brokering of services under specific conditions; 3) relies extensively on paraprofessionals; 4) enhances the role of DPOs but limits the number required; 5) utilizes extensive case banking; 6) relies on community resources; and 7) uses teams instead of individual caseloads.

The key uncertainties are:

- 1) The actual amount of brokering services that will be required due to conditions of probation and due to requests from probationers motivated for services.

- 2) The actual number of probationers in banks that will require attention. Banked cases will surface for attention for two reasons: violations of probation conditions and requests for services. (Investigation deputies may be best suited to prepare court petitions when violations occur.)
- 3) The distribution of time spent by the probation aides between assisting in preparation of investigation reports and monitoring of those on probation.
- 4) The effect of reduced caseloads versus increased brokering and monitoring. Our rough cost estimates are figured on the basis of supervision pro-rated caseloads ranging from 60 to 100. The 1977-78 proposed yardstick is 146. We assume the reduction in total workload *per team* will allow for increased quality. However, the exact yardstick figure for a total team is difficult to determine at this time.
- 5) The degree to which the Municipal Courts increase the use of court probation.
- 6) The degree to which the judiciary will accept the extent of case banking that we recommend.

C) Supervisory Requirements Required for Adult Probation Teams

We recommend that a team supervisor be assigned to each of the probation teams that we propose. Supervisory and coordinating needs beyond this are uncertain, especially since the Adult Division could use teams of different configurations. However, it is unlikely that the present number of supervisory positions in the Adult Division would be necessary, given the proposed changes.

All these uncertainties lead us to make budget estimates that are basically conservative. We anticipate that nearly any realistic combination of investigation and supervision functions in the teams will represent substantial cost savings while increasing the efficiency and effectiveness of the services provided.

Budget Estimates

Due to the type and degree of uncertainty we outline above, our budget estimates are provided below as separate ranges for Adult Supervision and Investigation. They are approximate but will at least provide a sense of the fiscal impact that is possible under the proposals made above.

Methodology

The cost estimates were developed using information from the proposed 1977-78 Adult Division budget. This information was made available to OPE by the County Administrator's Office. The figures used are presented here for reference and clarification.

ADULT DIVISION: '77-'78

Investigations	\$1,975,892
Supervision	<u>2,563,671</u>
TOTAL	\$4,539,563

These figures include salaries (minus salary savings), benefits, services, supplies, administrative support, and general department overhead. They do not include probation aide positions or potential revenues.

In developing the budget ranges, we identified constant factors and made a number of assumptions on variable factors based on information provided by the Department and our impact study of Adult Supervision. They are:

Constants

- 1) Under present conditions, 11,016 pre-sentence investigations are prepared by adult investigators per year; this is about 917 reports per month.
- 2) We can expect approximately 12,000 individuals to be on adult probation in Alameda County at any given point in time.

Assumptions

- No substantial change in sentencing patterns resulting in increased (or decreased) use of probation.
- 614 referrals to supervision per month, one-third of which (low risk cases) are immediately banked.
- In any given month, 2,454 cases are on intensive supervision for six months; 9,546 cases are banked.
- Approximately 1,920 voluntary requests for service come from banked cases per year, or 160 per month.
- Approximately 4,000 administrative actions (petitions) for banked cases per year, or 333 per month require deputies "paying attention to" banked cases.

A full explanation of assumptions and computations appears in Appendix Chapter 23.

ADULT INVESTIGATION

Under these conditions, we can estimate a number of budget ranges for Adult Investigation based on the present situation and four different workload yardsticks.

Present Situation

<u>Staff</u>	<u>Number of investigations per month (Yardstick)</u>	<u>Cost per pre-sentence investigation</u>	<u>Total Investigation Budget</u>
56 DPO I and IIs	17	\$179.36	\$1,975,892

Changes 1 and 2 reflect the conservative situation in which no increase in the use of short forms or letter reports occurs. No reduction in referrals to probation is anticipated under these two changes.

Change 1: 30% decrease in Yardstick

<u>Staff</u>	<u>Number of investigations per month (Yardstick)</u>	<u>Cost per pre-sentence investigation</u>	<u>Total Investigation Budget</u>
76.5 DPO IIIs	12	\$274.74	\$3,026,570

Increases:

- *STAFF* by 22.5 and upgrades position
- *COST PER REPORT* by \$95.38
- *BUDGET* by \$1,050,678

Decreases:

- *YARDSTICK* by 5

Change 2: 18% decrease in Yardstick

<u>Staff</u>	<u>Number of investigations per month (Yardstick)</u>	<u>Cost per pre-sentence investigation</u>	<u>Total Investigation Budget</u>
65.5 DPO IIIs	14	\$235.49	\$2,591,377

Increases:

- *STAFF* by 9.5 and upgrades position
- *COST PER REPORT* by \$56.13
- *BUDGET* by \$615,485

Decreases:

- *YARDSTICK* by 3

Changes 3 and 4 reflect the distinct possibility that judges - especially in the Municipal Courts - will utilize short forms and letter reports when a court report is requested. A reduction in referrals to probation - based on an increase in the use of court probation - is anticipated. Changes 3 and 4 assume that short reports and letter reports will take less time to research and prepare.

Change 3: 18% increase in Yardstick

<u>Staff</u>	<u>Number of Investigations per month (Yardstick)</u>	<u>Cost per Pre-Sentence Investigation</u>	<u>Total Investigation Budget</u>
46 DPO IIIs	20	\$147.02	\$1,623,054

Increases:

- *UPGRADES* to DPO III
- *YARDSTICK* by 3

Decreases:

- *STAFF* by 10 DPOs I and II
- *COST PER REPORT* by \$32.34
- *BUDGET* by \$352,838

Change 4: 30% increase in Yardstick

<u>Staff</u>	<u>Number of Investigations per month (Yardstick)</u>	<u>Cost per Pre-Sentence Investigation</u>	<u>Total Investigation Budget</u>
41.5 DPO IIIs	22	\$133.65	\$1,464,277

Increases:

- *UPGRADES* to DPO III
- *YARDSTICK* by 5

Decreases:

- *STAFF* by 14.5 DPOs I and II
- *COST PER REPORT* by \$45.71
- *BUDGET* by \$511,615

Summary

The Adult Investigation annual budget could increase by over \$1 million or decrease by over \$500,000, depending on the assumptions used.

Adult Supervision

Under the assumptions above, we can estimate a number of budget ranges for adult supervision based on the present situation and three different workload yardsticks.

Present Situation

<u>Staff</u>	<u>Yardstick</u>	<u>Total Budget</u>
56 DPOs I and II	146	\$2,563,671

Change I

<u>Staff</u>	<u>Yardstick</u>	<u>Total Budget</u>
41 DPOs I and II	60 in intensive supervision	\$1,876,973
	+ 233 banked cases	
	+ 47 service requests per year from bank	
	+ 98 administrative actions per year	
12 probation aides @ \$12,300 per year		\$ 147,600
		\$2,024,573

Increases:

- STAFF by 12 PA's

Decreases:

- STAFF by 15 DPOs I and II
- YARDSTICK by 86
- TOTAL BUDGET by \$539,098

Change 2

<u>Staff</u>	<u>Yardstick</u> (per person)	<u>Total Budget</u>
31 DPOs I and II	80 in intensive supervision	\$1,419,175
	+ 308 banked cases	
	+ 62 service requests per year (from bank)	
	+129 administrative actions per year	
26 Probation aides @ \$12,300 per year		\$ 319,800
		<u>\$1,738,975</u>

Increases:

- STAFF by 26 Probation Aides

Decreases:

- STAFF by 25 DPOs I and II
- YARDSTICK by 66
- TOTAL BUDGET by \$824,696

Change 3

<u>Staff</u>	<u>Yardstick</u> (per person)	<u>Total Budget</u>
25 DPOs I and II	100 in intensive supervision	\$1,144,496
	+ 382 banked cases	
	+ 77 service requests per year (from bank)	
	+ 160 administrative actions per year	
33 Probation Aides @ \$12,300 per year		\$ 405,900
		<u>\$1,550,396</u>

Increases:

- STAFF by Probation Aides

Decreases:

- STAFF by 31 DPOs I and II
- YARDSTICK by 46
- TOTAL BUDGET by \$1,013,275

The key factors that differentiate the three Supervision changes are:

- 1) the amount of brokering required
- 2) the intensity of monitoring in the first six months
- 3) the number of banked cases that require attention due to violations or requests for service

Summary

The Adult Supervision annual budget could decrease by as little as \$540,000 or by more than \$1 million depending on the assumptions used.

The complete budgetary picture must await resolution of a number of the key uncertainties we outlined above. The final net cost can only be established once the team configurations are in place. However, the budget ranges above reveal that substantial cost savings are probable, even under conservative assumptions.

Probable Effects

Any substantial change to a large public program always incurs many costs and concerns. Clearly, staff reductions and changes are fundamental to implementation of the adult probation program we propose.

The transition will be particularly difficult since the change does not only mean loss of staff but a basic change in assumptions about what probation is and how services are provided. Many of the staff changes and reductions can be made through attrition or possibly through transfers to other divisions of the Department. We anticipate that many of our most talented probation officers who have training in rehabilitation-oriented services will eventually

leave the Department to find successful and fulfilling careers in some of the community resources that will eventually provide the personal services needed by many offenders. For many probation officers, this career change may be a welcome, fresh opportunity to serve troubled people in a setting free of the constraints and ambivalence many experienced during the present transitional period in the Probation Department.

The future will be a challenge for them, regardless of the choices they will make. For the Department, the proposed adult program can be the starting point for many refinements and innovations. Given the talent within the Department, we can anticipate much that is creative and exciting in the coming months.

CHAPTER II

MANAGEMENT

II. MANAGEMENT

INTRODUCTION

Our evaluation of Probation management covers all department activities. It is divided into three levels. The choice to examine management from three different perspectives was based on the assumption that each directly affects the way in which deputy probation officers operate in providing services to probationers. The first concentrates on an examination of the political, legal, and organizational context in which probation operates; the second level focuses on the ways in which management relates to the other elements of the criminal justice system in Alameda County; and the last is devoted to an analysis of how well Probation manages its internal operations.

The criminal justice system within which Probation operates is very complex. The processes by which decisions are made and policies implemented are not always clearly delineated. We hope to clarify the ways in which each level of management affects the nature and quality of the others.

PROBATION IN PERSPECTIVE

LEVEL ONEAn Examination of the Political, Legal
and Organizational Context in Which Probation OperatesINTRODUCTION

Probation functions in an ever-changing environment. Pressures come from many directions and they affect the Department's priorities. The demands placed on Probation are often contradictory. What is the Probation Department's principal responsibility? Is it to rehabilitate the offender? Is it to protect society? Is it to furnish the courts with information on which to make sentencing decisions? Or is it primarily a system designed to save money by offering an alternative to the rising cost of incarceration?

Legally, the Probation Department's objective is to provide the bench with information to assist in sentencing decisions. *Historically*, there has been a commitment by society to the concept of rehabilitation but this is currently accompanied by a deep concern about what we are achieving for our investment. Presently, the entire criminal justice system is under legislative and public re-examination. For example, Public Law 1170 (SB42) and AB3121 call for an emphasis on the protection of the community. This formalizes a shift in emphasis where more balance is created in the continuous debate between a client-oriented system and public protection. The financial incentives to look at community-based programs and Probation as alternatives to incarceration are strong.

DISCUSSION

BACKGROUND

Probation is a direct outgrowth of a humanitarian concept of corrections which has its roots in the late 19th century. The provisions for *Adult Probation* became part of California's Statutory Code in 1903.

The 1903 statutes made no restrictions on eligibility for probation and did not require investigative reports. Since 1903, there have been over 20 amendments to section 1203 of the California Penal Code which have been in the direction of procedural clarification and a stricter attitude toward the probationer. *The primary legal duty of adult probation continues to be that of providing the court with information.* Investigation reports are required of all defendants convicted of felonies before probation can be granted. Further, the amendments have increased the conditions that can be imposed by the court and reflect a less flexible attitude toward the probationer than what is implied in the statute's original stipulations.¹

The amendments indicate a shift in emphasis away from the rehabilitation of offenders toward the protection of society. Both legislators and the public have become increasingly concerned about the increase in crimes committed, particularly violent crimes. A 1975 amendment to section 1203 of the Penal Code added a new section which denied probation to individuals convicted of crimes involving firearms. Two bills, AB 210 and SB 369, have been introduced to limit or deny probation to violent offenders. While SB 42 (now Public Law 1170, recently enacted) does not relate directly to probation, its emphasis

¹ A complete summary of the present legal mandates under which probation must operate - including the process by which one is placed on probation, the powers of the court and the duties and responsibilities of Probation officers - is available in the Appendix of this report. (Section 1)

on punishment is a good indicator of the mood of legislators; indeterminate sentences were seen as favoring the individual over the crime whereas determinate sentences identify punishment as the primary way to treat certain types of offenders.

The provision for *Juvenile Probation* also became part of California law in 1903. In contrast to adult probation, supervision was defined as a legal responsibility for juvenile probation officers. However, California's juvenile court law has moved toward a greater emphasis on the protection of society as well. Until 1975, section 502 of the Welfare and Institutions Code, which defined the purpose of the juvenile court, stressed a loose construction in interpreting juvenile law in order to allow practices designed to provide guidance for juveniles within the home and the community. In 1975, this section was amended to add emphasis to the protection of the public. In addition to a stricter interpretation of juvenile law, the nature of juvenile court proceedings has developed a closer resemblance to adult proceedings. This situation is not unique to California, but has occurred nationwide.

Most recent changes in California juvenile court law have been made through AB 3121, which incorporates the legal rights set forth by two Supreme Court cases regarding defendant rights.² While AB 3121 also mandates the de-institutionalization of status offenders, it takes a strong stance toward older juvenile offenders by requiring 16 and 17 year olds to prove their fitness to be tried in juvenile court. More importantly, AB 3121 weakens the discretionary power of juvenile probation officers. AB 3121 gives the district attorney final authority for filing cases and provides for an appeal

² Gault, 1976; Winship, 1970

system for the charging officer when a case is not filed. *The net result is a substantial loss of discretionary power for the juvenile probation officer.* This aspect of AB 3121 can be traced to a growing concern over the rising number of crimes committed by juveniles and a perceived failure of probation to provide sufficient protection to society.

Probation services are a county responsibility. There are no overall state standards or policies regarding probation that must be enforced. Although the California Youth Authority has a manual relating to standards and procedures, these are permissive guidelines and cannot be enforced.

THE CALIFORNIA SUBSIDY PROGRAM

Traditionally, three primary responsibilities have been identified for Probation: protection of society, the rehabilitation of the offender, and agent of the court. Legally, the primary responsibility has been to serve the court. Indeed, until 1966 responsibility to the courts took precedence over that of rehabilitation of the offender and led to an inconsistent provision of Probation services. Despite the fact that California's probation law was enacted in 1903, a 1964 California State Board of Corrections Study found probationary supervision to be inadequate in every county and non-existent in many counties.³ The study further found that offenders were being committed to institutions

³ Suleeberg, George. "Five Years of Probation Subsidy," California Youth Authority Quarterly, Fall, 1971, page 3.

because of lack of supervision capability.⁴ As a result, state funds have been allocated through the Probation Subsidy Program to strengthen county Probation services so that intensive supervision efforts can be provided to those who might otherwise receive state prison sentences. Follow-up evaluations of Probation subsidy have consistently shown that the intensive supervision provided has not reduced recidivism; in fact, greater surveillance activities have fostered greater discovery of violations. However, the program has saved money in terms of the alternative costs of incarceration.

The future of the State Probation Subsidy Program is uncertain. It has come under heavy public and legislative attack largely because it is felt that too many dangerous felons are left in the community. Two bills will be introduced in the State Senate to abolish the Subsidy Program. One has been introduced in the Assembly, AB758, to revise the program by not penalizing counties for committing those individuals convicted of serious felonies against people. It is unlikely, however, that the Subsidy Program will be abolished. It will probably be revised to limit its use in ways that will offer greater protection to the community.⁵

⁴ Interview with Ron Hayes, California Youth Authority, March 3, 1977.

⁵ Interview with Ed Harrington, Assistant Chief Division of Standards, California Youth Authority, April 1, 1977.

PUBLIC OPINION: ALAMEDA COUNTY

OPE contracted with Far West Research, Inc. (an opinion research firm) to survey citizens of Alameda County on their attitudes toward probation, the extent to which probation should be used and for whom probation is most appropriate. This task was undertaken to determine if the attitudes of people in this county coincide with the overall shift in emphasis reflected in recent state legislation. Appendix Sections 8 through 10 provide a detailed analysis of the findings.

The ideals of Probation, based on the humanitarian philosophy, can be found in the public; but widespread support for these ideals does not appear to exist. When asked the most important reason for granting Probation, 42 percent of those in favor of probation said they supported it because it allowed the offender to remain in the community. Very few of these respondents, however, favor this view for reasons related to rehabilitation or the offender's welfare. More people (46 percent) felt the need to watch an offender's actions in the community was more important than any other category.

Those in favor of probation and those with mixed reactions to probation feel probation should be used selectively. These two groups provide fairly consistent responses as to when probation should not be used or when its use should be limited significantly. Basically, these groups do not favor probation for:

- 1) juvenile offenders with several serious convictions for crimes against property or persons;
- 2) adult offenders with several previous crimes against property;
- 3) adult offenders who commit crimes against people.

The majority of those in favor of probation and those with mixed feelings about probation see probation as an appropriate sentencing alternative for the following kinds of offenses:

- 1) Crimes such as prostitution, drug addiction or drunkenness.
- 2) Crimes of property, such as petty theft, auto theft and burglary, *if this is a first time offense.*

These two groups of citizens have significant doubts about the appropriateness of probation as a sentencing alternative for juvenile offenders with several previous minor offenses.

When citizens were asked if they would be willing to have their local taxes increased if the use of probation were restricted, 51 percent of those in favor of probation said they were amenable to a \$75 a year increase. Fifty-five percent of those with a mixed reaction to probation were in favor of such an increase. The conclusion that can be drawn from the citizen survey is that *the public sees probation as a means of protecting society, that its scope should be limited and selective and that Alameda County adults are willing to pay for possible cost increases that result from increased incarceration.*

PROBATION DEPARTMENTS IN CALIFORNIA

Probation departments throughout the state have a legally established responsibility to serve the courts. Despite this fact, an OPE survey of California's eleven largest counties revealed that eight probation departments placed protection of society as their most important charge. Only two indicated information services to the courts as being their most important charge. Of those counties that gave first priority to protecting society, five placed rehabilitation of the offender as the next most important responsibility, as opposed to three which gave second priority to serving the courts.

The need to clearly establish and state responsibilities is overwhelming for Probation Departments throughout the state; however, given the pressure to address the needs of multiple audiences, the risks in doing so are very high. In a 1971 study for the California Board of Corrections, the staff of Probation Departments in California were asked "What *actually* is the primary goal of your agency?"

The responses were as follows:

- 38% - Rehabilitation
- 32% - Protection of Society
- 20% - Unclear
- 10% - Other

When Probation personnel were asked "What *should* be the primary goal of corrections?," the responses were as follows:

- 58% - Rehabilitation
- 39% - Protection
- 1% - Unclear
- 2% - Other

The California Board of Correction's study concluded that probation departments throughout the state have not made very extensive attempts to discuss goals and objectives with staff. Furthermore, even in those instances where goals had been formalized in writing, they had not always been disseminated to staff members or, if disseminated, they had not always been read, accepted, or *followed*.

The humanitarian concept on which Probation is based remains as the professional focus of line probation officers. While faith in the potential for the rehabilitation of the offender is present not only to the citizens of this county but among the professional staff of probation departments throughout the state, the level of confidence in those methods and the available resources used to bring about rehabilitation diminish. The legislature, the public, judges, and law enforcement agencies have begun to place the welfare of the community above that of the offender. This, in turn, will require greater attention on the part of probation officers in their services to the courts by providing sufficient information to allow judges to make decisions which will permit this kind of protection to occur. It is in this environment that Probation must operate.

CONCLUSIONS

- 1) *The environment in which Probation operates is complex, and the demands placed on its services are often conflicting. These realities reduce Probation's ability to set and focus its activities.*
- 2) *The need to clearly establish and articulate Probation responsibilities is overwhelming; however, the risk is high in doing so since Probation is confronted with the agendas of multiple audiences.*

In the next section, we will examine the extent to which the Probation Department in this county has succeeded or not succeeded in achieving a clear, independent role and posture with respect to other parts of the county criminal justice system.

LEVEL TWO

An Examination of the Ways in Which Probation Management
Relates To Other Elements of the Criminal Justice System in Alameda County Including:

- A. The Judiciary,
- B. Criminal Justice and Community Resource Agencies, and
- C. County Administrator's Office

INTRODUCTION

The method of selecting the Chief Probation Officer in Alameda County was modified by charter amendment in 1968. Before 1968, the search for and selection of the Chief Probation Officer was the sole responsibility of the bench. Presently, the Chief is appointed by the presiding judge of the juvenile court, on nomination by the Juvenile Justice Commission following an open and competitive examination. The Chief Probation Officer is, therefore, responsible to both the courts and the Board of Supervisors through the County Administrator. In our overviews with Probation management, the bench, members of the Board of Supervisors, and the CAO, we developed *no clear sense of who was responsible to whom, over what issues, and in what context. All expressed concern over a lack of control and ability to influence the focus and thrust of probation services.* The potential for conflict is apparent. Given these conditions, it is important to determine how probation management identifies its priorities and plans and coordinates its efforts with its "outside world," while at the same time, providing direction and support to its staff.

A. THE JUDICIARY

The Probation Department must address itself to the needs and concerns of 45 Municipal and Superior Court Judges operating in seven different jurisdictions. Probation staff exert an enormous amount of energy in their attempts to tailor their reports, procedures, and relationships to suit the wishes of each judge. While the Probation Department has taken initiative to communicate effectively and coordinate its affairs with the courts, those efforts for the Superior Court and five of the six municipal jurisdictions have been, for the most part, on an individual judge basis. They center largely around responding to the procedural demands of individual judges and coordinating probation services to meet those demands. The Probation Department sees value in greater judicial consensus at least by jurisdiction. Movement toward consultation with groups of judges on major issues is present with the Juvenile Court, the Superior Court and the Oakland Municipal Court Coordinating Council. There are incentives, however, for Probation to keep judicial directives individual, despite its costs. The potential for conflict over priorities with the CAO and among judges is therefore minimized.

* * *

EVALUATION CRITERIA

We used the following criteria as the basis of our analysis:

Leadership: to provide direction, establish priorities, act decisively, identify accountability.

Coordination: to facilitate positive interaction among various actors within the criminal justice system.

Communication: to establish and use tools best suited to foster a smooth and efficient exchange of information within the Probation Department and with other criminal justice agencies and county administration.

Anticipation: to foresee pressures and needs, to develop, anticipate and execute appropriate strategies for responding to needs and pressures.

* * *

FINDINGS/DISCUSSION

1) Communication Between Probation and the Courts

- Members of the judiciary rate Probation's ability to communicate with the bench as generally "good." Their reaction, however, to Probation's ability to effectively coordinate its efforts with those of the bench is "mixed."
- Eleven out of 27 judges interviewed felt there were formal lines of communication between the court and probation.
- To its credit, the Probation Department is largely responsible for identifying the need for formalized communication with the court and for initiating proposals for the establishment of: the Juvenile Court/Probation meetings, the OMC Coordinating Council, and the newly established Superior Court Probation Committee.
- Joint-Court Probation meetings were seen as a valuable means of providing the potential for increased awareness of the position and limitations of each group. They were seen by the Oakland Municipal Court and the juvenile court as providing an arena in which procedures could be developed and implementation steps worked out. Further, they provided the opportunity to relay policy decisions and the forum for feedback on those policies.
- In our interviews with judges and in our observations of inter-agency meetings, we learned that Probation representatives to these groups are often reluctant to share their problems with the courts. Many judges expressed concern that too much deference was shown to judges by probation managers thereby impeding an equal give and take among the participants.
- All 27 judges interviewed stated that an informal method of communication exists between themselves and Probation. For the most part, this system took the following forms:

1. Use of the Court Officer assigned by the Department to specific courts.
 2. Court-initiated conversations with probation managers and staff over specific cases and procedures.
 3. Probation-initiated conversations with the Assistant Chief Probation Officer. Division directors and section supervisors over specific procedures or cases.
- Informal systems of communication generally increased levels of awareness for both the Bench and Probation and provided an effective means for ironing out differences immediately. They did not, however, provide for the overall coordination of activities or an adequate means of presenting the Courts with sufficient feedback on the implications of sentencing decisions on probation or the effect of changes in procedures.
 - Since joint coordinating committees exist only for the Juvenile Court and Municipal Court (the newly established Superior Court Probation Committee did not come about until April, 1977), it is easy to understand the mixed ratings given to Probation by the judiciary on ability to coordinate activities effectively with the bench. The appropriate vehicles do not exist for five of the six Municipal Courts and, until recently, did not exist for the Superior Court. Coordination efforts in these areas are fragmented and uneven.

2) Policy Direction

- Probation managers acknowledge that further efforts are necessary in the development of effective communication and coordination systems. The court's notion of the limitations and demands placed on probation varies from judge to judge. Probation managers feel a certain responsibility to take some initiative in educating judges about probation.
- In completed questionnaires, judges rated senior management as "good" in terms of their responsiveness to directives from the Bench.
- 66 percent of DPOs in the Department rated senior management as "Fair" to "Poor" in their willingness to act as an advocate for staff.
- Group interviews revealed a strong sense of frustration among deputies at being responsible to the wishes of so many different judges. Staff were vocal in their complaints against senior management for its unwillingness to confront judges with time, staff, and workload implications of judicial directives.

- We asked Probation managers if they would feel comfortable returning to talk with a judge when the implementation of his/her directives presented problems for Probation. All said they would feel comfortable, but only one could cite an example of when it had been necessary to do so.
- Senior management is skeptical about the possibility of the courts offering uniform or consistent guidelines.
- Judges responses were mixed when asked if they felt that they themselves should make policy decisions for Probation. Eighteen out of 27 said yes; eight said no; and one answered "sometimes."
- From a judicial perspective, the following areas seemed appropriate for policy direction from the bench to the Department:
 1. The form and content of court reports.
 2. The way in which restitution to victims is determined and pursued.
 3. When and under what conditions revocation petitions should be filed.
 4. The nature of surveillance activities by probation officers.
- Several judges suggested that probation policies themselves could be improved and gain wider acceptance among the judiciary, thereby minimizing the need for policy direction from the court, if:
 1. Communication with the courts as judicial bodies was improved.
 2. Probation developed a sound research and planning capacity with reliable information on which to formulate policy.
- The responses were mixed when judges were asked if they should speak with one voice to Probation - 17 said yes; 10 said no. Many judges felt that the establishment of broad guidelines was appropriate, but just as many were skeptical about the willingness of individual judges to adopt guidelines and thereby limit their individual discretion. Several Municipal Court judges were concerned that one voice would mean the voice of the Superior Court leaving the concerns of the Municipal Courts unrepresented.

- Despite their skepticism over the courts willingness and ability to offer consistent guidelines, there are areas in which probation managers would like some direction from the court. The areas are mostly in areas of procedure rather than probation programs. They are in areas *least likely* to increase the potential for conflict with the Board of Supervisors. The following were suggested by the Department as reasonable areas in which to receive policy direction from the court:

1. The content and specificity of information and recommendations in adult court reports.
2. The form in which information is regularly fed back to the courts from Probation and vice-versa.
3. The way in which conditions of probation will be supported.
4. When and under what conditions revocation petitions will be filed.
5. Programs and procedures for handling dangerous and serious youthful offenders.
6. An indication of the minimum period of detention for juveniles in the camps.

- It is evident that agreement exists between Probation and the courts over what issues would be appropriate to receive policy direction from the judiciary. They are:

1. When and under what conditions revocation petitions should be filed.
2. The format and content of court reports.

It is significant that even though a wish for and a desire to provide policy direction in these areas exists, little has been provided beyond revocation policies for Superior Court and initial court report discussions.

3) Implementation of Judicial Directives

- Although probation management is considered responsive to judicial requests, when we asked if the Probation Department does an effective job of implementing the policies of the Superior and Municipal Court, opinion was somewhat divided. Fifteen judges said yes; eight said no; two said sometimes; two said they did not know.

Judges who felt the Probation Department did an effective job of implementing policies were generally those who were directly involved in or a member of a court with a formal means of coordinating its activities with those of probation.

- Those judges who felt probation did not do an effective job of implementing their policies offered the following criticisms;
1. Revocation petitions, despite repeated requests, are not timely.
 2. Court reports are too long, insufficiently evaluated and information is not verified.
 3. A short court report form was requested several years ago and has not been implemented.
 4. Probation resisted the implementation of the Volunteer Program.

SUMMARY

Coordination efforts are being made through the use of the juvenile court/probation meetings and the OMC coordinating council. The reorganization of the Oakland Municipal Court has the potential for promoting more uniformity in policy direction and may allow the Probation Department to allocate staff time more efficiently, particularly for court officers. However, the traditional way in which the Probation Department attempts to implement policy decisions is fragmented and inefficient, often placing an added burden on Probation staff. Managers are generally uneasy returning to judges when the implementation of policy directives is not feasible. The costs are high in terms of staff morale and dissatisfaction among judges who do not feel their directives are being adequately considered.

CONCLUSION

Probation managers take great care to respond to the wishes of individual judges. The Probation Department has initiated and played a major role in efforts to increase communication and coordination between themselves and the courts. While they enjoy the general confidence of the bench and a degree of effectiveness, areas for improvement remain. Many efforts are fragmented and inefficient, prompting concern from judges and probation deputies alike.

B. CRIMINAL JUSTICE AND COMMUNITY RESOURCE AGENCIES

The following section presents an examination and analysis of the Probation Department's relations with other members of the criminal justice system in Alameda County and its relations with community resource agencies providing services to probationers.

The Probation Department is frequently the initiator of coordination and communication efforts with other members of the criminal justice community. However, with the exception of meetings which Probation initiates and hosts with law enforcement agencies, these efforts tend to be fragmented and over specific cases and procedures. This leaves other members of the system unclear as to what they can expect from the Probation Department under a certain set of conditions. Lack of clarity over probation's major purpose, coupled with an acknowledged hierarchy of influence in which the Probation Department sees itself and is seen by others as somewhere near the bottom, weakens its bargaining position and its ability to maintain control over its activities. This situation is further complicated by a natural tension which has developed out of philosophical differences that exist among various agencies with reference to Probation. When, however, agreement exists among the actors on the primary emphasis of services, the risks to clearly state goals and objectives are minimized. With reference to community resource agencies, the emphasis is on the rehabilitation of the offender. Clarity of purpose allows the administrative capacities of the Department to fully develop. Under these circumstances, communication and coordination efforts work effectively and efficiently.

EVALUATION CRITERIA

We used the following criteria as the basis for our analysis:

Coordination: to facilitate the positive interaction between Probation and those agencies with which it does business.

Communication: to establish and use tools best designed to foster a smooth and efficient exchange of relevant information within the Probation Department and with other agencies.

FINDINGS/DISCUSSION

1) Law Enforcement. The Probation Department has gone to considerable effort to communicate and coordinate activities in a formal way with law enforcement agencies in the county. At present, these efforts are focused on juvenile concerns.

- The Probation Department hosts meetings of the Juvenile Officers Coordinating Council, the North County Police/Probation/Court meetings and the South County Police/Probation meetings.
- Philosophical differences, however, exist between law enforcement and Probation. These differences create tension and, consequently, impede constructive communication.
- Face-to-face contact is rare between line personnel of law enforcement agencies and Probation. Contacts generally take the form of telephone contacts initiated by the police. DPO accessibility is frustratingly limited, according to most law enforcement agencies.
- Law enforcement sees Probation as operating in a policy vacuum. From their point of view, there is no departmental focus on any specific objectives. As a result, law enforcement often does not know what to expect from probation officers. They expressed particular concern in the following areas:
 - a) When they can expect probation officers to cooperate on release of information.
 - b) Under what conditions revocation petitions will be filed.

2) The Public Defender

- There is no formal routine communication between the Probation Department managers and the Public Defenders Office. Whatever communication and coordination efforts that do occur are informal; individuals generally confer by phone or letter over specific cases.
- The Public Defenders interviewed had no clear idea of what the Probation Department policy was with reference to court reports and investigations. Therefore, expectations vary widely and PDs are often disappointed in:
 - a) the level of cooperation in exchanging information
 - b) the timeliness of court reports
 - c) the content of court reports
 - d) the way in which prior criminal history is presented in court reports.

3) The District Attorney

- The basic form of communication between Probation and the District Attorney is the statement prepared by the District Attorney outlining the facts of an offense, briefly summarizing prior criminal history and presenting a recommendation of disposition. This document contains information vital to the preparation of an Adult Investigator's report. In our staff questionnaire, we learned that almost half (47 percent) of the North County investigators do not receive this statement in time to use it. Approximately 61 percent of South County deputies do not receive it in time. In our subsequent interviews with the staff of the DA's office, we learned that the transmittal of this document is a low priority item for attorneys.
- Efforts have been made by the Adult Division Director to facilitate the flow of information from the District Attorney's Office to Probation Officers. An effective strategy was pursued by the Department in light of the fact that the DA's Office is under no legal obligation to provide Probation with information. An agreement was reached for the development of a simple, one-page form to transmit information. It has, however, not been implemented by the DA's Office.

4) AB3121: An Example of Probation's Relationship Within the Criminal Justice System.

OPE tracked the implementation of AB3121 to provide a picture of the way in which members of the criminal justice system work together to coordinate their activities. This task was specifically designed to delineate Probation's role in that effort and to inform us of its position within the criminal justice community, its sense of itself, a description of its decision-making process, and how these factors affected the application of AB3121. (Please refer to Appendix Section 19, for a full accounting of the implementation of this bill. Highlights are presented below to illustrate our conclusions.)

- AB3121 required two programmatic changes in how we handle juvenile offenders: initiation of the Home Supervision Program and the de-institutionalization of the Status Offender. The bill required one major procedural change. A petition filing process was established, giving final authority to the District Attorney, thereby, reducing the discretionary authority of probation officers in the disposition of 602 cases.* This shift changed the PO's role from decision-maker to advisor. Furthermore, this shift in responsibility created a change in work assignments for both the Probation Department and the District Attorney's Office. The change in the filing procedure presented the greatest implementation problems.
- The Probation Department initiated the organization of a Juvenile Justice AB3121 Team in October, 1976. It included staff from the DAs' Offices, Probation, and the Court Clerk.
- The Assistant Chief Probation Officer presented a proposal for petition filing to this team which closely paralleled the scheme outlined in AB3121. While not formally rejected by the DA, this proposal was not acceptable to the DA's Office. Probation's representatives strongly sensed a desire on the part of the DA to exercise full authority under AB3121 and to expand the role of the police in the filing process.
- Advice was not solicited from Probation staff until after this tentative plan was approved allowing little time for staff reaction and possible modification before its implementation on January 3, 1977.
- The plan approved required additional investigators and district attorneys, new office space, and the reallocation of probation work assignments. The CAO was not represented in these negotiations; thus, the interests of the Board of Supervisors went unrepresented and little consideration was given to the fiscal impact of the filing procedure until after it was approved.

* Juveniles arrested for felony or misdemeanor criminal offenses.

- The DA had the negotiating edge and was perceived by probation managers to have more political clout. Adding to the Probation Department's defensive stance was a strong sense of DA and police dissatisfaction with the way in which the Probation Department filed and investigated cases.
- Probation has been credited for its willingness to cooperate both by the police and the DA. However, the Probation Department was hampered by its perceived lack of negotiating power and an apprehension about the role desired by the DA. The Probation Department reacted from a defensive position which resulted in the Department's giving up more power than was required by the law.
- Both the police and the DA have clearly defined responsibilities to protect the community. Their authority can be found in the law. The responsibilities of the Probation Department are not as clearly defined. In AB3121, the directive of the law enhanced the authority of the police and the District Attorney and diminished that of the Probation Department.

5) Community Resource Agencies

The Probation Department has extensive contact with community resource agencies that provide services ranging from drug-alcohol abuse to employment training and counseling. To assess the adequacy of the relationships, OPE administered a questionnaire to 77 agencies with whom Probation has the most frequent, formalized contact. To validate the responses from the questionnaire, OPE conducted in-depth interviews with 10 percent of the 77 agencies.

- No single individual is responsible for monitoring the status of community resources providing services to probationers.
- Those agencies with contracts with the Probation Department are monitored closely and provided with budget and program preparation assistance by the Administrative Support Services staff.
- Cataloging of resources is done by individual Probation staff members at their own initiative.
- Staff members of Pre-Trial Services, however, have developed and printed two directories which are used throughout the Adult and Pre-Trial Division.
- No department (or division) community resource file exists. However, the lack of systematized cataloging of resources has little apparent effect on the quality or appropriateness of referrals.

- Almost all (92 percent) of the agencies responding to the OPE questionnaire felt that referrals made by the Probation Department were appropriate to the service provided.
- Over three-fourths (77 percent) of the agencies responding stated that probationers generally had a clear idea of the services they would receive. The existence of a formal or informal liaison between the Probation Department and the agency is the key factor in determining the quality and nature of the relationship with community groups.
- About half of the agencies surveyed have a liaison with the Probation Department. Of those, the majority (84 percent) felt that the liaison improved the coordination of their activities with those of Probation considerably. (Please see Appendix Section 12 for specific examples.)
- Through interviews, we learned that those agencies without a liaison criticized the Department more frequently for inappropriate referrals and an inadequate exchange of information.
- Three-quarters of all agencies surveyed described their relationship with the Probation Department as "excellent" to "good."
- One-quarter of the agencies rated their relations with Probation as "fair," "poor," to "non-existent." Reasons most frequently cited were:
 - 1) unrealistic expectations of treatment programs.
 - 2) the use of agencies as dumping grounds.
 - 3) forced treatment for those unwilling or unready for services.
- When asked to describe the availability of probation officers, 81 percent of the agencies stated that the DPO was routinely available for treatment planning and the coordination of activities.

CONCLUSION

We conclude that while probation managers have often initiated and played a major role in efforts to increase communication and the coordination of activities between themselves and other members of the criminal justice system in Alameda County, those efforts are frequently undermined by the lack of clarity with which the Probation Department presents where it is going and what it intends to achieve. Its bargaining position is weakened, thereby jeopardizing its ability to maintain control over its own activities. Relations are frequently fragmented and strained. However, when clarity of purpose exists, as is the case with community resource providers, the administrative capacities of the Probation Department are fully realized and the results are dramatic.

C. COUNTY ADMINISTRATOR'S OFFICE

In addition to other elements of the criminal justice system, Probation also relates to the Board of Supervisors/County Administrator's Office (CAO). This is an important part of its environment within Alameda County. The following section presents our examination of those relations and how it affects the Department's sense of role and accountability.

In Alameda County, the Probation Department is accountable both to the Courts and to the Board of Supervisors (through the CAO). Accountability falls into two general areas. The Probation Department is responsible to the courts for providing sentencing information directly to them and for establishing programs designed to carry out the orders of the court. The Department must then turn to the CAO and the Board of Supervisors for the funding necessary to implement those services and programs. Under this structure, it is frequently difficult to determine in what areas funding considerations will prevail and in what areas the wishes of the courts will take precedence.

Different priorities for Probation create the potential for conflict between the Board/CAO and the Courts. Probation managers are afraid they will lose control over their activities if they are caught in the middle of an open dispute. For example, the Department's managers have not been inclined to utilize judges of the Superior or Municipal Court in resolving program or funding issues with the Board of Supervisors.

We used the following criterion upon which to base our analysis:

Leadership: to clearly define and promote agency goals and objectives; to delineate roles; to establish accountability.

FINDINGS/DISCUSSION

1) Disparity Over Priorities

- In an effort to examine the potential for conflict, OPE asked judges and the CAO to state their goals for Probation by four legitimate responsibilities of Probation services in the priority of importance to them. The chart below represents the personal priorities of the courts and the CAO.

	<u>The Courts</u>	<u>The County Administrator's Office</u>
The reintegration of the offender back into the community	2	3
The protection of Society	1	1
To serve the courts	3	4
To provide less ex- pensive alternative to incarceration	4	2

- As one can see, there is concurrence on the number one priority for both bodies: the protection of society. However, there is a significant difference of opinion on Probation's second most important responsibility. The potential for conflict exists over the most fundamental use of Probation. Is it to provide rehabilitative services; or is it to provide active surveillance in the community so that costly prison commitments can be reduced?

2. Clarity of Departmental Priorities

- To establish the clarity with which the Department presents its priorities, OPE asked judges and the CAO to rank the priorities listed above, placing them in the order of importance the Department would give to them. The judges responses revealed that no consensus exists among judges regarding the priorities they perceive the Department sets for itself. The CAO, in contrast, perceives that the Department places its highest priority on community protection. Serving the courts through information provided on offenders, reintegration of offenders into community and a less expensive alternative to incarceration were perceived by the CAO as the Departments second, third and last priority, respectively.

- From the CAO's perspective, his office and the courts are in accord on the protection of society and the reintegration of the offender. The potential for conflict exists over the emphasis the CAO perceives the Department to place on service to the courts and the CAO's own priority in that area. Further, the potential for conflict exists over the use of Probation as a means of reducing the prison population. For the CAO, this is a high priority; for the courts, it is perceived to be the least important of its charges. Further, it is clear that the Department's message to the judges about what it is in business to do is so clearly fragmented that judges have no consistent understanding of the way in which the Department sets its own priorities.
- Top probation managers place heavy emphasis on their responsibility to serve the courts. In conversations with OPE, however, they were continually reluctant to place their responsibilities in order of priority. Services to the courts was seen as most important, but an almost equal emphasis was placed on protecting society by the reintegration of the offender.
- Nineteen of the 27 judges interviewed by OPE felt that dual accountability and the consequent lack of clarity with which areas of responsibility are delineated limited Probation's ability to respond effectively to the needs of their court in the following ways:
 - 1) Budget considerations affected staffing levels so seriously that the quality of programs suffered. The large adult supervision caseloads, general and support, were sighted specifically.
 - 2) Budget restrictions affect the development of new and potentially effective programs. An example cited was the deletion of an additional job developer from this year's budget, even though most judges see job development as increasingly important.
 - 3) Judges suspect that testing conditions for substance abuse are randomly rather than routinely enforced.
- Although some judges may feel that funding for Probation may be inadequate, the CAO clearly has exercised its rightful authority to recommend changes in light of budget constraints.

3. Working Relations Between Probation and the CAO

Probation managers and the CAO enjoy a close, open working relationship with one another.

- The CAO characterized Probation's ability to communicate effectively as "excellent."
- Coordination efforts are rated as "excellent" by the CAO.

- Probation managers frequently are the initiators of meetings requiring the coordinated efforts of the CAO, Probation, and other members of the criminal justice system.
- While coordination and communication is very good, no regularly scheduled meetings take place between the CAO and Probation manager. This has the natural limitation of providing no built-in review process for examining agreed-upon decisions.

The way in which the Probation Department acted to prepare itself, the CAO and other members of the criminal justice system for the enactment of AB3121 is commendable. AB3121 created procedural and programmatic changes for the Probation Department that also had considerable impact and implications for the entire criminal justice system. Probation initiated the coordinated response through a request to the CAO in June, 1976, to set up a meeting involving Probation, the Superior Court, the County Clerk, Public Defenders, and District Attorneys' Offices to examine the fiscal impact and program changes. Input was provided in doing a cost analysis of the bill. Probation's response to program changes and budget impact has been rated very high by the CAO. Program proposals, suggestions, and an analysis of the impact of AB3121 were presented to the CAO before the bill was even passed. Probation managers were able to prove the need to maintain present staff and to get additional staff. Evaluation plans have been developed by the CAO for the impact of AB3121. However this is an unusual and significant step. Normally, the orientation of communication with Probation does not provide an effective method of obtaining feedback on policy decisions. The CAO sees it as a natural short-coming of a crisis-oriented process.

- The CAO characterizes Probation managers as excellent in exercising flexibility in resolving problems between themselves and the CAO. For example, the CAO is committed to the use of paraprofessionals and while many probation administrators have questions about the advisability of their use within the Department, they agreed to implement the Probation Aide Program. By cooperating, the Department maintained goodwill with the CAO. In group interviews, we heard many staff say that the decision to introduce paraprofessionals represented the first step toward their "extinction" and that Probation administrators did not do all they could have done to protect and support them. To their credit, however, Probation managers have developed a number of data collection systems with which to provide the CAO with hard information to support arguments to change program staffing levels. An internal evaluation is presently being done of the Probation Aide Program to determine its value to the Department.

- To its credit, the Probation Department has taken steps to involve the CAO early on in planning for changes and is generally good at providing sound information on which to base their budget requests. Yet, 66 percent of DPOs I and II rate senior management as "Fair" or "Poor" in their willingness to act as an advocate for staff.
- The CAO has never been asked by Probation to intercede with the courts over program issues. If the courts have program demands and the CAO is disinclined to adjust funding levels to accommodate those demands, the Probation Department will generally adjust its own internal workload to accommodate the court's wishes.

CONCLUSIONS:

- 1) *The Department is accountable to two bodies who often have conflicting priorities. The CAO and the courts disagree over the ordering of priorities for the Probation Department. Therefore, the incentives to clearly state and publicize goals and objectives are few. The emphasis placed on any one of them must change depending on the circumstances and the Department's audience. Probation managers are therefore reluctant to establish priorities or make choices regarding their responsibilities for probation services. The clarity with which the Department's goals and objectives are stated is, as a consequence, inadequate and of limited value. This situation not only affects the way in which the Department communicates and coordinates its activities with the courts and the CAO, but it also affects the way in which policy direction to the Department is given and implemented.*
- 2) *The demands of the court and the need for fiscal responsibility combine to cause the Probation Department to frequently act in ways which unfortunately reduce the confidence and morale of its own staff.*

RECOMMENDATIONS

In reaching our conclusions regarding the best reporting and accountability structure for Probation, we examined four distinct options. The first option is the present situation in which Probation is directly accountable to both the courts and the Board of Supervisors. The second option places the Department directly under a "Board of Directors" of Superior and Municipal Court Judges. The third option separates the Probation Department - as we know it - into a number of small mini-departments responsible to the presiding judge of each Municipal Court and the Superior Court. The fourth option has the Department reporting directly to the Board of Supervisors and (CAO) entirely independent of the judiciary. We examined each option in terms of its potential effects on: the county budget, politics, goals, program/ services, organizational structure, and employee relations.

1. *OPE believes that the present structure of accountability for probation services is preferable to the other three options examined. We feel that there are fewer disadvantages and pitfalls associated with this option when compared with the others. We suggest that the Chief Probation Officer continue to be appointed by the Superior Court from a list of candidates provided by the Civil Service Commission. We believe, however, that the role of the Municipal Courts should be increased in the appointment of future chiefs.*

Although we suggest that the judiciary and the Board maintain the present system, WE RECOMMEND THAT:

2. *The Superior and Municipal Courts - with the Department and in concert with the Board of Supervisors - determine what the primary business of the Probation Department should be. Agreed upon priorities should be established and these priorities and choices should be clearly articulated, not only to the Probation Department and the rest of the criminal justice system, but to the community as a whole.*

Specific ways of making this happen are outlined in Chapter 1 of this report.

By suggesting that the Courts and the Board maintain the present accountability structure for Probation, we do not mean to imply that the other three options are unworthy of full consideration. On the contrary, we encourage the Courts and the Board to examine the four options and make their own determination or choose an entirely different option.

The options are provided on the following pages with a brief statement of the benefits and costs of each.* An overall assessment follows.

* Some Probation Departments in California exist as two separate bodies, one providing services to juveniles and the other to adults. The separation is based largely on the assumption that the focus of services and therefore the nature of activities is very different for the two groups. In considering this option for Alameda County, OPE came to the conclusion that, given recent Supreme Court decisions, the change in California Juvenile Law with implementation of AB3121 and the fact that dependency investigations are now the responsibility of the Social Services Agency, that the nature and focus of Probation Services for juvenile and adults is not dissimilar enough to warrant a recommendation for separation.

OPTION A: That the Probation Department be accountable to the Municipal and Superior Courts as a body.

COSTS

Budget: Might remain the same but has the potential for increased requests.

Politics: Volatile. Potential for increased friction between the Board and Courts. Likelihood of getting all jurisdictions to speak with one voice is minimal. Requires change in Charter.

Goals: None

Programs/Services: Probably no change; maybe more internal programs requested by judges.

Organizational Structure:

- 1) Would require a Board of Directors made up of judges to set policy, manage and administer the activities of Probation.
- 2) Another bureaucratic layer imposed through program and funding considerations must be presented; Probation's budget would be part of the judiciary.

Employee Relations:

- 1) Staff morale, promotional opportunities, mobility may not be improved: could be worse.

BENEFITS

Budget: None

Politics: None

Goals: Focus will be on information to the courts.

Program/Services: No change

Organizational Structure:

- 1) The use of a Board of Directors would at least focus Probation's accountability to the Courts into a single policy-making body.

Employee Relations:

- 1) Creates clarity of purpose.

OPTION B: That the Probation Department be divided and made accountable to individual judicial jurisdictions.

COSTS

Budget: With decentralization, it is likely that budget requests would increase due to competition and lack of economies through centralization.

Politics:

- 1) The Board of Supervisors/CAO would be placed in a direct adversary relationship with individual judges.
- 2) The potential for empire building.
- 3) Requires change in Charter

Goals: Clearly defined but fragmented by court.

Programs/Services: Proliferation of individual programs by court.

Organizational Structure:

- 1) This configuration would require the judge to become a manager.
- 2) Provides another bureaucratic layer through which Probation must move for funding; Probation's budget would be part of judiciary.

Employee Relations:

- 1) Reduce promotional possibilities and mobility since few positions would exist in any district.

BENEFITS

Budget: None

Politics: Judges' decisions regarding probation would be more visible.

Goals: Clearly defined and a congruence of philosophy between Probation and the individual courts.

Programs/Services: No change

Organizational Structure:

- 1) Judges would be closer to Probation staff and able to see results of decisions immediately.
- 2) Provides a closer link with other members of the criminal justice system working in that jurisdiction (Law Enforcement, Public Defender, District Attorney, etc.)

Employee Relations:

- 1) Has the potential for higher value being placed on the work done by line staff; increased morale through greater sense of worth.
- 2) Clarity of purpose.

OPTION B: That the Probation Department be divided and made accountable to individual judicial jurisdictions.

COSTS

Budget: With decentralization, it is likely that budget requests would increase due to competition and lack of economies through centralization.

Politics:

- 1) The Board of Supervisors/CAO would be placed in a direct adversary relationship with individual judges.
- 2) The potential for empire building.
- 3) Requires change in Charter

Goals: Clearly defined but fragmented by court.

Programs/Services: Proliteration of individual programs by court.

Organizational Structure:

- 1) This configuration would require the judge to become a manager.
- 2) Provides another bureaucratic layer through which Probation must move for funding; Probation's budget would be part of judiciary.

Employee Relations:

- 1) Reduce promotional possibilities and mobility since few positions would exist in any district.

BENEFITS

Budget: None

Politics: Judges' decisions regarding probation would be more visible.

Goals: Clearly defined and a congruence of philosophy between Probation and the individual courts.

Programs/Services: No change

Organizational Structure:

- 1) Judges would be closer to Probation staff and able to see results of decisions immediately.
- 2) Provides a closer link with other members of the criminal justice system working in that jurisdiction (Law Enforcement, Public Defender, District Attorney, etc.)

Employee Relations:

- 1) Has the potential for higher value being placed on the work done by line staff; increased morale through greater sense of worth.
- 2) Clarity of purpose.

OPTION C: That the Probation Department be primarily accountable to the Board of Supervisors.

COSTS

Budget:

- 1) See below (Politics).

Politics:

- 1) Incurs political costs to the Board.
 - a) Judges will circumvent CAO and come directly to the Board for Probation Program requests. Therefore, CAO has less control over Probation's budget.
 - b) Judges become subservient to the Board vis a vis Probation. May use the media to get message to the public over program issues.
 - c) Potential for Board to become the focus of citizen outrage over "crime."
 - d) Charter change required

Goals: Most likely would change depending on pressure from the community. Potential for lack of consistency.

Organizational Structure: Judges would have less influence over Probation's structure.

Employee Relations:

- 1) May continue present frustrations since staff will feel natural pressure to respond to individual judges.

BENEFITS

Budget: Board of Supervisors have greater control over funding levels.

Politics: None

Goals: More clearly reflect the mood of the community.

Organizational Structure: Individual judges would have less influence over Probation's structure. Creates continuity.

Employee Relations:

- 1) None evident.

ASSESSMENT OF THE OPTIONS

Options A and B pose real challenges to the courts to administer probation services. Options A, B, and C all present high political costs for the Board. Options A and B create organizational problems for the administration of probation services. All three options have the potential for complicating and disrupting the funding process. Option C does not take into account that, by law, the Probation Department is answerable to the Superior Court. It is OPE's opinion that the present system of dual accountability is the least costly alternative and with the implementation of the recommendations outlined below, will provide the greatest benefit to all parties in clarifying the focus of probation services, and improving the efficiency and effectiveness with which those services are carried out.

Recommendation:

3. *The Probation Department take the initiative to create formal work sessions with each jurisdiction of the Superior and Municipal Court to discuss specific issues and procedures of concern to the Department and the courts. These sessions should be made the forum for negotiations and clarification.*
 - a) *Out of these sessions, formal Court-Probation Committees be established for each jurisdiction.**
 - b) *The purpose of each committee will be to develop and implement an annual memorandum of understanding outlining the way in which probation services will be provided for each jurisdiction. It will allow for the anticipation of and planning for changes in needs, in advance. It will further provide a means by which programs and procedures can be worked out that will go beyond the requests of individual judges, thereby allowing for implementation with minimal disruption to the Department and higher quality of service.*
 - c) *The work sessions and committees should include mid and line level supervisors as part of probation representation. This will increase the utility and practical focus of specific procedural arrangements.*

* The Judicial Coordinating Committee is a natural forum for discussing Court-Probation issues that affect the Municipal Courts. The JCC could assist in setting up the working committees for each jurisdiction.

Recommendation:

- 4) The County Administrator's Office provide an active representative to the formal work sessions and the Probation-Court Committee. This presence will provide:
- a) greater awareness to the courts of the fiscal limitations of their program and procedural proposals.
 - b) inform the funding decisions of the County Administrator by increasing CAO knowledge of Probation's programs and the needs of the courts.

Recommendation:

- 5) Probation managers assert themselves, share their problems, and take some risks in their dealings with the Courts and the CAC/ Board of Supervisors. With clear purpose and support, this change in behavior will serve to increase Probation's visibility in the county and enhance the Department's influence.

LEVEL THREE

An Examination of the Internal Management of the Probation Department

INTRODUCTION

Concerns and issues arose during the overview with reference to how the Department manages its internal operations. The complexity of the processes in which Probation is involved goes far to explain many of the concerns. However, the often competing and contradictory demands on Probation places a priority on innovative and responsive leadership. Our evaluation examines the internal management processes used to: communicate policy, solicit feedback and participation, motivate staff, and coordinate activities.

* * *

SETTING PURPOSE AND DIRECTION

In this section, we examine the way in which the Probation Department presents objectives and communicates policy.

EVALUATION CRITERIA

We used the following criteria as the basis for our analysis.

To define and promote agency goals and objectives; to delineate roles; to establish accountability; to provide direction and establish priorities; to motivate staff and resolve problems; the ability to anticipate and identify program and personnel needs; the ability to provide staff support and improve employee performance.

FINDINGS/DISCUSSION

1. Disparity Over Priorities

- A disparity exists between the personal priorities of line staff, first line supervisors, and section supervisors and what they perceive to be the priorities of the Department's managers.

With the exception of group counselors and clerical personnel, all staff responding by questionnaire perceived the *administration's most important priority to be service to the courts.*

All staff surveyed placed *service to the courts* as their *third* most important priority.

The reintegration of the offender is Probation services' most important responsibility for unit supervisors, adult supervision DPOs, juvenile and institution DPOs, pre-trial specialists, and group counselors.

The protection of society is Probation services' most important responsibility for section supervisors, adult investigation DPOs, adult combined DPOs, and clerical personnel. For this group, their *second* most important priority is the *reintegration of the offender*.

2) Training

- The Probation Department offers a good deal of initial training to its employees and a substantial amount of on-going training. This is particularly true for the DPO series. *Of all county departments, it probably provides the most comprehensive training opportunities to its employees.*

The message and focus of the Department's training program is a major means of testing the clarity with which the Department states its priorities to the staff. In the last three years, that message has shifted. Prior to the creation of the CORE courses, a much heavier emphasis was placed on training within a psychoanalytic framework or around a medical treatment model. Rehabilitation of the offender was the message and thrust of the training deputies received. With the implementation of the CORE courses, a much heavier emphasis is now placed on the development of basic writing skills for the purposes of communicating effectively with the courts.

The CORE courses much more clearly reflect the Department's present priorities. These CORE courses have been required of all new DPOs within the last three years. Most deputies, however, received required training before the CORE courses were instituted, when a heavier emphasis was placed on rehabilitation.

The Department has established divisional and department-wide training committees for the purposes of allowing staff to identify their on-going training needs and implement appropriate training programs. The major focus of these courses is on treatment alternatives.

So, while the message about the Department's priorities may be clearer for newer deputies (insofar as required training courses are reflective of them), the old emphasis remains treatment-oriented through the focus of on-going training programs for older deputies. Therefore, deputies are getting a mixed message from the Department: "Our purpose is court service, but we'll also provide you with growth in rehabilitation skills."

3. Clarity of Purpose

- Until recently, the Probation Department had a very clearly written statement of purpose in their Administrative Manual in which "the reintegration of the offender into the community to the point where he acts in accord with the laws of that community" was identified as Probation services' principal responsibility. Since the beginning of this evaluation, the statement of purpose has been revised with a heavier emphasis placed on service to the courts, but including a responsibility for the protection of society *and* the reintegration of the offender. The revision moves away from a clear statement and reflects a reluctance to place its responsibilities in any practical priority. It is OPE's opinion that this shift away from the goal of reintegration reflects a general lack of confidence in the rehabilitative process. It also reflects the fact that disagreement exists among the staff on what constitutes successful reintegration.
- These points are borne out by information received when we asked staff to describe the clarity of the Department's stated objectives. Twelve percent said that stated objectives were clear and consistent with the responsibilities of a probation department. Almost half felt that while goals and objectives were fairly clear, it was difficult to measure the Department's progress in meeting those goals.

Thirty-eight percent felt the goals and objectives were either inconsistent with the responsibilities of a probation department or were not clearly defined.

We asked staff if the Department's stated goals and objectives were accurately reflected in the priorities place on the day-to-day tasks they were asked to perform. Sixty-three percent said "only somewhat accurately;" twenty percent said "not accurately at all."

In group interviews, we asked people to inform these responses and learned the following: Probation employees do not have confidence in the Department's sincerity and commitment to its statement of purpose. The reintegration of the offender, they feel, is seen by the Department as an ideal to be

strived for; but in fact, when choices must be made and tasks selected, the Department's managers will emphasize service to the courts. While staff have received no written statement that this is the Department's most important priority, they quite clearly understand through work demands placed on them that it is. The implications of this lack of agreement among staff and administration over departmental priorities are significant.

4. Roles and Responsibilities

- Over 35 percent of the DPOs rated unit supervisors as "fair" to "poor" in terms of their *willingness to address* issues in their program. More than 40 percent rated them as "fair" to "poor" in their *ability to resolve* issues.
- In group interviews with unit supervisors and line workers, we learned that there is widespread dissatisfaction with the way in which the roles and responsibilities of unit supervisors are presently conceived: They have very little decision-making power; their involvement in policy-making is minimal; very little authority is given to them to resolve even minor issues. Many supervisors see their present role as primarily clerical with an emphasis on record-keeping, processing, and rules. Many supervisors stated that as their job is presently conceived, their skills are not effectively or efficiently utilized. In short, most claimed they did not have enough to keep themselves busy, and the Department is presently not taking full advantage of their experience and wisdom in policy formulation or program planning. Many supervisors expressed *profound job dissatisfaction* in the group interviews.
- Questionnaire results show that over 75 percent of the unit supervisors have considered leaving the Department. Over 37 percent had considered leaving because of job dissatisfaction. Sixteen percent of the unit supervisors rated their morale as low to very low. Forty-six percent rated their morale as neither high nor low.
- Approximately 45 percent of the DPOs rated section supervisors as 'fair' or 'poor' in terms of their *willingness to address* program issues directly. Approximately 55 percent rated them as 'fair' to 'poor' in terms of their *ability to resolve* program issues decisively.
- In group interviews with line staff, unit supervisors and section supervisors, we learned that the role of section supervisors is not clearly understood by line workers and is frequently not understood by unit supervisors. Generally speaking, section supervisors, when asked, had no clear notion of what decisions they could make and what decisions needed to be taken to higher levels of administration.

Section supervisors rarely make decisions without checking with superiors. When asked what would most clearly improve their job (health benefits, salary increases, etc.), the predominant response was: "*Clearly delineated lines of authority.*"

SUMMARY

After assessing our group interviews and discussions with the Department's senior managers, it is OPE's opinion that the administration's unwillingness to delineate lines of authority and involve mid-level and line supervisors in decision-making and policy formulation is primarily due to the knowledge of senior management that a disparity exists between their own priorities and those of the staff. Were they to engage mid- and line-level managers more actively in policy formulation and decision-making, the potential for increased conflict would surface. This would increase the possibility of a loss of control.

CONCLUSION

Managers order the priorities for Probation. In the absence of agreement on priorities, the managers of the Probation Department are not inclined to delegate authority. The talents and capacities of the Department's employees, particularly mid- and line-level supervisors, are underutilized. The coordination of activities is complicated and less efficient as information and decision-making responsibility is fed up the chain of command. This situation fosters a gap in understanding that inevitably leads to conflicts between expectations and performance.

* * *

B. INTERNAL COMMUNICATION

This section is an examination of the way in which the Department communicates with staff and encourages feedback and participation.

EVALUATION CRITERIA

We used the following criteria on which to base our analysis.

To establish and use tools best suited to foster a smooth and efficient exchange of information within the Probation Department; to initiate and solicit feedback; to motivate staff to resolve problems; the ability to communicate decisions, exchange information, and create an environment of timely, relevant feedback.

FINDINGS/DISCUSSION

Written communication is thoroughly and clearly organized, and conscientious effort is made at all levels to disseminate information efficiently. Staff meetings and the Chautauquas, however, do not fully meet their responsibilities of providing a forum for an effective exchange of information with staff. Staff do not believe that their input and feedback is sincerely desired by management. The Department uses a rigorous chain of command through which information must usually flow. Information fed from line staff to senior management, in staff's opinion, often gets distorted and delayed. Our findings reveal many positive aspects, however.

1) Flow of Information

- Written material presented to the staff is generally well written, thorough, and clearly organized.
- A conscientious effort is made by the Department at most levels to disseminate memos, minutes, procedures, and newsletters.
- In group interviews, however, staff pointed out that often the minutes of directors' meetings are delayed as much as a month. This is significant in that it is a major source used to update information and present new information. The delay in the dissemination of this document minimizes its usefulness.
- Fifty-five percent of the staff reported that their supervisors held staff meetings on a regular basis.
- In our observations of staff meetings at all levels, we found that they were generally well planned and organized, usually with specific items which were covered in a thorough and efficient fashion. Eighty-one percent of those attending staff meetings regularly found them a useful means of conveying information to their superiors. Ninety-one percent found them useful for the receipt of information from management. And yet, over 70 percent felt that staff meetings were only somewhat or not at all useful as a means of resolving in-house problems and issues.

- In group interviews, staff provided perceptions which will clarify the figures presented above. Staff stated that frequently meetings are merely a rendition of information already received in the directors' minutes. And that while they do provide a forum for reaction to information received and an opportunity to provide input to administration, staff have little confidence that their advice and information is sincerely desired by their supervisors.
- Additionally, staff perceive first-line supervisors as not having the power nor the encouragement to resolve in-house problems.

2) Mechanisms to Encourage Feedback and Participation

- Chatauquas were identified by senior management as one of the primary ways in which to disseminate and exchange information with the Department's employees. It is further seen as a way to heighten the visibility of the Department's top administrators. Only 26 percent of the staff regularly attend Chatauquas.

Of those attending Chatauquas, 52 percent found them to be a useful means of exchanging information with management. What is significant, however, are the reasons given for why people do not attend: Nineteen percent stated work demands left them with insufficient time; twenty-five percent stated that they resented the fact that they were held at lunch and not during working hours; thirteen percent felt they were not a useful means of exchanging information.

OPE's observers of the Chatauquas over a four-month period noted a decided improvement in format and tone. The move was from a formal, often rigid approach to staff inquiries to a less formal, round-table discussion of concerns presented in which staff were invited and encouraged to react to management's explanation of issues.

- The Department has recognized the communication problem and developed a method to receive staff suggestions at the Assistant Chief Probation Officer level. The system, although reasonable and sound, is largely unknown to the Department's line staff. Fifty-one percent of the staff are unaware of the process. The responsibility of informing staff of the purpose and use of this procedure rests with first line supervisors. Over 80 percent of the first line supervisors are aware of the procedure. We can only conclude that first line supervisors have not been effective in informing those they supervise of its existence. Thirty-five percent of the staff are aware of the process but haven't used it. Only seven percent of the staff have used it to their satisfaction. Seven percent have used it but were not satisfied with the procedure.

This lack of awareness is unfortunate, since the procedure is innovative and is designed to:

- 1) monitor the effectiveness and timeliness of the chain of command.
- 2) identify bottlenecks.
- 3) provide ready access to top administration by line staff.

The Assistant CPO sees this process as a valuable and important means of encouraging staff participation. We agree.

- During group interviews, we learned that Probation employees are frustrated by the laborious process of feeding written and verbal suggestions up the chain of command. As each supervisor adds his or her comments, the original message becomes distorted and/or watered down. Staff's perception of these factors serves as a deterrent to making suggestions or presenting new ideas.
- The Department has, however, enlisted the participation of a significant number of first line supervisors and line workers. They have been assigned to serve as liaisons with community resource agencies. The level of participation in the concerns and operations of the Department increased significantly as the liaison role often involves:
 - 1) the interpretation of Probation policies and procedures to community groups.
 - 2) the dissemination of information on changes in community services within the Department.
- Fifty-one percent of the community resource agencies polled had a liaison with Probation. Probation had initiated that role in 80 percent of the cases.

CONCLUSION

While the Probation Department has adopted many excellent methods for disseminating information to staff, the methods presented are not sufficient to provide a forum for the exchange of information and an opportunity for staff to participate in the decision-making process.

* * *

C. ADEQUACY OF STAFF SUPERVISION

This section is an examination of the adequacy of supervision.

EVALUATION CRITERIA

OPE used the following criteria as the basis for its analysis:

To delineate roles; to provide direction; to motivate staff and resolve problems; to establish and use tools best suited to foster a smooth and efficient exchange of relevant information within the Probation Department; the ability to communicate decisions, exchange information, and create an environment of timely, relevant feedback.

FINDINGS/DISCUSSION

The nature of and the way in which the role of first line supervisors is defined and the subsequent reduced influence of unit supervisors negatively affect the quality of supervision. A significant number of the Department's employees find the supervision they receive to be of limited value, even though they feel supervisors possess the necessary qualities to adequately supervise employees and that supervisors understand the practical demands and limitations of those positions over which they have control. Performance evaluations are not helpful sources of information for employees in the performance of their job because they are often not an accurate reflection of performance; and when they are, there are very few rewards for a job well done and very few penalties for doing a poor one. Tools available to the Department to reward excellence and motivate staff are limited, and those that are available are underutilized. There are few incentives, other than personal satisfaction, to encourage staff to excel.

1) Ratings of Supervision

- As pointed out in the previous section, there is widespread dissatisfaction among line workers and unit supervisors over the way in which the roles and responsibilities of first line supervisors is presently conceived. They have very little decision-making power, thus affecting the quality of supervision they are able to provide.
- Over 35 percent of the DPOs rated unit supervisors as 'fair' to 'poor' in terms of their *willingness to address* issues in their program. More than 40 percent rated them as 'fair' to 'poor' in their *ability to resolve* issues.

However:

- The majority of Probation staff rated their first line supervisors as "excellent" or "good" in the following areas:

- 1) leadership
- 2) probation knowledge and skills
- 3) organizing ability
- 4) willingness to act as an advocate for staff
- 5) ability and willingness to resolve inter-personal conflicts.

(Please refer to Appendix Section 2, page 10, for specific tabulations for each job classification.)

- Fifty-four percent of the staff felt their supervisors understood the practical demands and limitations of the jobs for those they supervised. Thirty-five percent felt they understood fairly well, and only ten percent felt their supervisors did not understand at all.
- Sixty-four percent found the supervision they received to be 'valuable' or 'very valuable.' However, thirty-six percent found it to be of little or no value.
- Most staff have trust and confidence in their immediate supervisors: 71 percent of the staff stated that if they submitted a memo through their supervisor, the content of which he/she disagreed with but that the staff member wanted to reach higher levels, their supervisor would pass the memo on with a comment, noting the areas of disagreement.
- We asked staff to speculate on what would happen if he/she had a serious disagreement over some aspect of his/her work and the next level of supervision were called in to negotiate. Nine percent felt they wouldn't stand a chance because the mid-level manager would side with the supervisor. Thirty-nine percent felt they would get a fair hearing. Fifty percent weren't sure what his/her supervisor's boss would do. It is OPE's feeling that a measure of this uncertainty can be explained by the fact that, with the exception of one, all section supervisors - in the DPO series, at least - have been newly assigned to their positions within the past year.
- We asked staff to speculate on how their supervisor would react if criticized for some aspect of the Department's operation. Seventy percent felt their supervisor would shoulder the responsibility.
- We asked staff if an employee were accused of misjudgment or irresponsibility, how they would expect their supervisor to react. The overwhelming majority of the staff felt the supervisor would adopt a neutral position and request information.

Nevertheless:

- Despite the relatively high ratings of first line supervisors in the questionnaire, during the group interviews many staff members in the DPO series and unit supervisors themselves stated that there are unit supervisors in the Department who are not functioning adequately, who are frequently out of the office, who do not work the required number of hours, and who are unavailable for consultation with staff. Very often, this situation goes uncorrected, having a deep effect on the morale of line workers.

2) Performance Evaluations

- Over ninety percent of the staff receive performance evaluations. Ninety-one percent stated that their evaluations were discussed with them. Eighty percent felt that the person evaluating them was knowledgeable enough about them to judge their performance. Eighty-two percent felt the person evaluating them possessed the necessary supervisory skills to adequately judge their performance. Yet, 39 percent found the evaluation only somewhat helpful to them in the performance of their job. Thirty-five percent found them not very helpful. In group interviews, we learned that staff perceive evaluations to be of little value because:
 - 1) evaluations very often are not an honest reflection of performance - many complained that non-productive staff members continue to receive good evaluations.
 - 2) there are few rewards for excellence.
 - 3) there are few penalties for poor performance.
- Evaluation forms used by the Department are currently being revised to more accurately reflect the job demands of each classification. Even with a more honest assessment of performance, the incentives are strong, in light of Civil Service termination procedures, not to give unsatisfactory evaluations when they are warranted.

- A higher value is placed on compatibility rather than on competence, according to many employees. Many stated that outstanding job performance, even if accurately reflected in evaluations, was not used when considerations for promotions were made. While staff perceive the above to be the case, with the resulting deleterious effects on morale, in conversations with the Department's senior managers, we learned that the contents of evaluations play heavily in promotion decisions.
- We asked staff to describe the way in which they received reinforcement from their supervisors for a job well done.
 - 23 percent said their supervisor would offer none.
 - 9 percent said their supervisor would say nothing but acknowledge the good job in their next evaluation.
 - 36 percent said their supervisor would verbally commend them but fail to mention it in their evaluation.
 - 29 percent said they would receive informal and formal acknowledgement.

3) Promotional Opportunities

- In group interviews, many staff members stated that other than self-satisfaction, there were very few incentives to excel in their work. We asked staff to tell us if there were promotional opportunities for most people in their job classification. Twenty-three percent said yes; 66 percent said yes, in theory, but in fact, they were so limited as to not be taken seriously by many employees.
- In our group interviews, we learned that very few people in all job classifications surveyed expect to receive a promotion no matter how high the quality of their job performance may be:

4) Job Dissatisfaction

From Staff Questionnaires

- Seventy-one percent of the staff have considered leaving the Department. Of those, 40 percent considered leaving for reasons of job dissatisfaction. Thirty-five percent considered leaving because of a lack of promotional opportunities. If people had considered leaving the Department, we asked them to tell us why they hadn't left. Forty-seven percent said because they still got a certain amount of satisfaction from their work. We were surprised by these figures, given the high level of job dissatisfaction expressed in the previous question. In group interviews, we learned that by "satisfaction" employees referred to:
 - 1) the fact that they enjoyed the company of their colleagues.
 - 2) the fact that they liked the opportunity to be of help to defendants.
- In group interviews, we learned that by job dissatisfaction employees referred to the disparity that exists between their own priorities and those of the Department and the implications of that disparity on:
 - 1) the amount of time available during the working day to engage in rehabilitative efforts with defendants;
 - 2) the unwillingness of administrators to trust employees and delegate authority;
 - 3) the limited way in which the Department promotes and encourages the participation of staff in the decision-making process;
 - 4) the Department's unwillingness to act as an advocate for them with the courts and the CAO.

SUMMARY

The above findings cast a bleak picture, yet some factors need to be considered: The DPO's average length of service with the Department is approximately eight and one-half years. For many, work at the Probation Department has been their only employment since leaving school. Job skills and work orientation are linked

to the social service profession. The use of casework and counseling are key elements of a typical deputy's expectations on the job. Yet, these skills are no longer emphasized to the same degree they were ten years ago in corrections work.

In an occupation where demand has changed continually over the last several years, many of the Department's staff feel locked into a job with very few possible alternatives. These economic and historic facts merely heighten the individual's sense of frustration and anxiety over what the future will hold for them with the Department.

CONCLUSION

Our findings lead OPE to conclude that the supervision received by the Department's employees is of limited value to them in the performance of their job.

Internal Management of the Probation Department

Many of the frustrations cited above exist in any large, complex organization. Our focus here is on those issues that can be ameliorated, at least to some degree, through corrective actions by Probation management working in cooperation with the judges, the CAO, and the Board of Supervisors. OPE feels, however, that many of these frustrations can be relieved through the creation of open, genuine dialogue between Probation personnel and management. We have already seen some most encouraging signs.

The Department's senior management appears willing to confront some of the problems. In fact, as we have indicated, innovative activities have been underway for some time. In addition, key management positions have opened up to fresh faces and new ideas in the past year. The initiatives taken in the past few months by the Adult Division Director, for example, point to a new awareness of staff concerns and a willingness to question old habits and suggest new approaches.

However, OPE feels that the internal problems confronting both management and staff are critical; much remains to be done. We suggest the following to deal with important aspects of internal management:

RECOMMENDATIONS:

Disparity over Goals and Objectives

- 6) *That the Superior and Municipal Courts, in concert with the Probation Department and with the Board of Supervisors, make decisions about what the Probation Department should be in business to do; that agreed-upon priorities be established and that that message be clearly stated to the Probation Department and all staff. Work priorities must reflect the outcome of these decisions.*
- 7) *That the training programs provided and funded by the Probation Department reflect the emphasis placed on the priorities established for and by the Department.*
- 8) *Outline areas of authority for all mid- and line-level supervisors. Evaluate job performance based on their willingness and ability to take responsibility for the authority given to them.*
- 9) *Include line- and mid-level supervisors as active participants in Court-Probation work sessions and committees.*

Communication, Staff Participation, and Feedback

- 10) Schedule the Chautauquas during working hours and at times most convenient for maximum attendance by staff doing shift work.
 - Continue the use of informal, round-table discussions at these meetings.
- 11) Institute regular staff meetings for all employees with their immediate supervisors. Encourage the focus of these meetings to be a time for reaction to written information already disseminated.
 - Make immediate supervisors responsible for presenting the ideas and concerns of those he/she supervises in writing to mid-level supervisors.
- 12) See that all staff are made aware of the suggestion procedure through the Assistant Chief Probation Officer and are encouraged to use it.

Adequacy of Supervision

- 13) Set up sessions with staff, by job classification, to develop realistic ways in which the Department could reward excellence among its employees. Serious consideration of the creation of a "deep job classification" (DPO III) is a sound first step.
- 14) Require that formal acknowledgement be given in written evaluations when specific exemplary performance has occurred.
- 15) Continue to develop specific criteria on which each job assignment will be evaluated. Make sure evaluations are an honest assessment of performance in light of these criteria.

CHAPTER III

ADULT INVESTIGATION

III. ADULT INVESTIGATION

INTRODUCTION

Providing information on adult defendants prior to sentencing is a critical part of Probation's involvement in the criminal justice system. It is the main form of relationship between the Probation Department and the courts. Under the present system, each defendant for whom probation is an option has an adult pre-sentence report prepared to provide information to the court, the District Attorney, and defense counsel prior to sentencing. The reports cover the defendants' prior offense records, family backgrounds, employment status, education, and other relevant factors. The volume is impressive: In the last five years, the number of report referrals to the Department has risen 21% with a total of 10,059 for 1976. The product of an adult investigation - the Report and Sentence ("R & S") Report or Diversion Report - is integral to the sentencing of an offender and to the supervision of those granted probation. The reports must be thorough, analytical, and timely. The process of providing these reports accounts for 53 percent of the budget of the Adult Division and 12 percent of the Probation Department's entire budget. The expected budget for FY 1977-78 is \$1,970,074 according to CAO estimates.

Our evaluation examined both the *process* used to investigate adult defendants and the *products* provided to the courts, attorneys, and supervision deputy probation officers. We focused our efforts on issues relating to efficiency, quality, accuracy, and utility to the major users.

The results are consistent and compelling: Our present process produces reports to the courts of undistinguished quality and of limited utility. The reasons for this can be found within the Department, but much of the problem lies far beyond

Probation or even our local courts. We suggest some major steps to make the reports more useful and of increased quality. It is our feeling that the present situation is critical and represents a substantial waste of the \$1.9 million Alameda County invests in providing pre-sentence information to the courts.¹

Our evaluation of adult investigation covers eight areas:

- Effects of plea/sentence bargaining
- Verification of information
- Adequacy of analysis and evaluation
- Adequacy of review prior to submission to court
- Degree of feedback on performance
- Clarity of policies and direction
- The court officer system
- Effects of new determinate sentencing law

1. EFFECTS OF PLEA/SENTENCE BARGAINING

- 1) OPE evaluated the effects of plea/sentence bargaining on the reports supplied to the courts. Plea/sentence bargaining is the process whereby a matter is adjudicated - through negotiations between the DA, defense counsel, and judge - avoiding jury trials and shortening the time between arraignment and disposition of a case.

FINDINGS/DISCUSSION

The value of probation reports is severely limited in cases where negotiations have occurred prior to the filing date of a court report. Informed estimates² are that negotiations involving sentencing occur in over 90 percent of the cases in the Superior and Municipal Courts. *In nearly all these cases, the basic outline of a sentence has been negotiated prior to the filing of the pre-sentence report from the Probation Department.*

¹ Average cost per adult pre-sentence report is \$179.36, according to the Probation Department.

² No accurate data is available from any source or combination of sources. The 90 percent figure is the consistent estimate of judges, DAs, and Public Defenders interviewed.

At present, we find that during the negotiations, judges rarely have any information from Probation. In fact, many of the judges related that the only information they have during plea negotiations is the police and CII reports. Only on rare occasions are pre-plea reports requested and prepared by the Probation Department.*

Plea/sentence bargaining is a reality of our criminal justice system. As practiced, however, it seriously limits the utility of the court report and reduces the incentives to produce good reports to the bench. These views were expressed in many interviews and surveys conducted with judges and DPOs, in our tracking of investigation cases, and in discussions with criminal justice personnel in other counties.

At present, judges are receiving very little information prior to plea/sentence bargaining. In turn, dispositions are being determined by bargain prior to the date for sentencing. This results in greatly diminishing the court report's influence. Therefore, the true usefulness of court reports, as of now, is highly questionable. The situation is particularly serious when one realizes that, according to Probation Department estimates, the average pre-sentence report costs \$179 to produce.

* In contrast, Marin County's pre-plea reports are prepared in all Superior Court cases and 50 percent of the Municipal Court cases (those involving second offense drunk driving and alcohol related). The reports are provided to the District Attorney and Defense Attorney in the Superior Court cases to be used in a special negotiation session. The reports take the form of verified, factual information with inferences and tentative conclusions but no direct recommendations. Following conviction, a short supplemental report is prepared with specific recommendations. At present, the Superior Court judges are not involved in the negotiations and reserve the right, and often do, negate a bargain based on the DPO's two-part report.

In Municipal Court, the report is given to both attorneys and the judge and contains specific recommendations in case of conviction. This allows supervision to begin immediately following the disposition hearing. One mandatory section of the Municipal court reports is the requirement of a discussion of specific treatment programs. The judges are involved in the negotiations and, once again, reserve the right to negate bargains, and often do, based on the DPO's report.

We found that many DPOs were not being routinely notified of the bargains reached prior to submission of court reports and, in fact, there was no formal method to provide this information. In addition, many DPOs felt that the bargain affected the way they wrote a report. In the questionnaire, the DPOs responded as follows:

	<u>% Knowing About Bargain</u>	<u>% Feeling That The Bargain Affected Their Reports</u>
Combined Caseload DPO (South County).	19	35
Investigating DPO (North County).	52	52

Also, 89 percent (16) of the judges interviewed felt that the DPO should be made aware of the bargain. This lack of knowledge and the effect of the bargain on the report is negative. In interviews, the DPOs felt that not knowing about the bargain severely hampered their efforts to prepare a useful report. Many DPOs felt the department policy of making recommendations independent of the bargain undermined report usefulness. Further, they often found the defendant uncooperative because he knew the report had little bearing on the disposition of his case. This situation was not only reported by deputies but was also directly observed by OPE staff.

The judges were divided on how the DPO should tailor his reports. Some wanted the recommendations tailored to the bargain while others wanted them independent of the bargain. There are morale and utility costs to both approaches. If the deputy tailors the report to the bargain, a false sense of agreement with the bargain is fostered and the true objections to a disposition are not brought out. If the deputy writes the report independent of the bargain, it will not accurately place probation in context, provide alternatives, nor provide adequate information for supervision in those cases that call for a disposition other than probation, but where probation is the bargain. Couple this with our findings of reluctance and outright refusal of many judges to withdraw a bargain in light of new information, and a serious problem exists.

Many DPOs feel that their reports have little or no influence on the negotiation process. Most feel that they have no real ability to influence dispositions through the information contained in the reports. They expressed little incentive to provide superlative reports due to this lack of input. This all contributes to reduced utility, poor quality reports, and low staff morale.

DISCUSSION

Major revisions in the present method need to occur. The investigation needs to begin sooner. The information has to be well analyzed, accurate, and verified; and realistic probation plans and alternatives have to be presented. This requires closer report scrutiny by the unit supervisors and a general tightening up of the whole investigation process. The result would be a greater emphasis on the importance of the investigation and the court reports. This will require very experienced, highly knowledgeable investigators who do excellent field work and analysis. They will have to report in detail the purpose and scope of probation and offer credible alternatives when probation or incarceration is not recommended. The benefit from this system would be:

- Better informed dispositions through the provision of timely information to judges;
- More realistic supervision once on probation;
- Improved morale;
- Better report utility and quality;
- Closer and better relations with the court.

The potential impact under this system is tremendous since 91.3 percent of the Superior Court cases were bargained in some fashion in 1975. In Municipal Court, there are no reliable figures, but informed sources report 93-96 percent of the cases are bargained in some fashion.

In nearly all these cases, the adult investigation report was not available prior to or at the time of the negotiations.

Timing of Reports: A Key Factor

Section 131.3 of the California Code of Civil Procedure permits judges to order a probation report any time following the arrest of a defendant. "Pre-Plea" reports are, therefore, permitted. Theoretically, these reports could be made available at the time of plea/sentence negotiations. In practice, there are serious obstacles to the widespread use of pre-plea reports: Defendant cooperation prior to conviction, and DA reluctance to allow probation officers to question alleged victims, or witnesses are but two reasons. Although opposition to the use of pre-plea reports is based on legitimate concerns, selective use based on agreement by the attorneys and the judge is possible.

CONCLUSIONS

- 1) The present plea/sentence bargaining process is weakened because bargains are usually made in the absence of important information provided in adult probation reports. Inadequately informed dispositions can result.
- 2) We further conclude that the present adult pre-sentence report is of limited value in actually informing sentencing decisions by judges; plea/sentence negotiations have normally occurred prior to the filing of the report and the basic outlines of the sentence have been agreed upon by all key parties in a case. This occurs in over 90 percent of all cases. Although the judge can withdraw his support for a bargain after receiving the court report, judges have informed OPE that this rarely occurs. Therefore, we conclude that the pre-sentence report prepared by the Probation Department has - at best - marginal influence for sentencing decisions.
- 3) Although this may be the reality in nearly all cases, OPE agrees with members of the bench and the Probation Department that the court report is the single source of information available to the court on a defendant that is free of the adversary process. Unfortunately, its value is more theoretical than real.
- 4) We further conclude that this state of affairs has serious costs on staff morale within the Department and also on the quality of reports produced. Few incentives exist to produce reports of high quality under these circumstances.
- 5) We further conclude that there is no formal notification system between Probation, the District Attorney, and the courts that could provide the probation officer with the details of a bargain prior to writing a pre-sentence report. This situation exists despite the clear intent of the bench that probation officers be made aware of plea/sentence bargains.

OPE feels that this is a serious situation, warranting decisive action. At present, Alameda County taxpayers support a \$1.9 million adult probation investigation program that fails to meet the principal needs of its primary users - the judges of the Superior and Municipal Courts.

RECOMMENDATIONS

In light of our findings and conclusions, OPE makes the following recommendations:

1. We recommend that in those cases that have been plea/sentence bargained, a notification system be set up to inform investigating DPOs of any bargains prior to the preparation of pre-sentence reports to the court.
2. We recommend that the judges of the Superior and Municipal Courts develop solutions to the serious problem of court report utility. The Probation Department and the County Administrator's Office should participate in these discussions.
3. We recommend that the following steps be undertaken to create a more cost-efficient use of adult court reports in light of court backlogs and plea/sentence negotiations:
 - a) The Courts establish clear guidelines regarding their needs for pre-sentence information.
 - b) "Letter reports" and "short forms" should be introduced into the Municipal courts as the primary source of adult pre-sentence information. The precise outlines and content should be negotiated between judges and the Department.
 - c) Where possible, the present information available to the court prior to conviction should be briefly enhanced. An option might be a brief statement from probation regarding defendants' probation history. CII reports (rap sheets) and arrest reports should be more legible and timely for plea/sentence negotiations.
 - d) Selective use of pre-plea reports should be encouraged where consent is obtained by the key parties.

Summary Recommendation

4. Unless significant steps are taken to increase the utility of adult probation pre-sentence reports to the court, OPE recommends that they not be produced unless specifically requested by the court. Where requested, we recommend that specific alternatives be considered, including use of letter reports and short forms. For short reports and where complete R & S reports are required by law, we recommend substantial improvements in report quality. These areas are specifically covered in the pages that follow.

2. VERIFICATION OF INFORMATION

A probation report to the court on a defendant awaiting sentencing is only as good as the accuracy of the data. Verification of information is one of the most critical aspects of the investigation process. Adequate verification is often difficult but always valuable. OPE assessed the present reports in terms of verification procedures and thoroughness in order to relate to the overall usefulness of reports to the court.

Verification means that the DPO has determined if the information he has received from the defendant is true or false and is so stated in the report. In addition, the DPO has stated in the report his source of verification or the efforts he has made to verify when actual verification is, in fact, not accomplished.

FINDINGS/DISCUSSIONS

We found the lack of verification to be one of the main complaints of the judges and independent raters. This is an especially sensitive area since accurate, factual data is essential to informed sentencing by the judges and to good, efficient casework by the supervision DPO.

We obtained our findings by the following means:

- One-to-one interviews with 27 Superior (9) and Municipal (18) Court judges,
- Discussion sessions with 12 independent raters who had rated 51 Alameda County adult R & S reports on the basis of defined criteria,
- Investigation case tracking and observation by OPE staff, (12 representative cases),
- Sample of 177 reports received from the Probation Department,
- Questionnaire responses from deputy probation officers.

SPECIFIC FINDINGS

- OPE's independent raters felt strongly that little or no verification was being done by the DPOs, given the random sample of reports reviewed.
- The independent raters felt strongly that if verification was being done, it was not documented or the failure to accomplish verification was not being noted in the report.
- All 27 judges interviewed felt that information verification was not adequate in adult court reports.
- In our investigation case tracking, OPE found an average of five essential pieces of information per case that were not verified by adult DPOs.
- Often the information which was not verified was not received by the DPO. The following is information DPOs felt they generally received: (% saying they received the data.)

	<u>Combined Caseload DPOs-South County</u>	<u>Investigating DPOs-North County</u>
Job/Wage Verification	58 % (21)	57.1% (12)
School Records	38.9% (14)	19.0% (4)
Medical Information	29.4% (10)	15.0% (3)
Psychiatric Information	29.4% (10)	25.0% (5)
Pre-Trial/OR Facesheet	47.1% (16)	57.1% (12)

(For complete information, see Appendix, Section 4)

OPE FURTHER FOUND THAT:

- Probation officers, DAs, Public Defenders, and Private Attorneys feel the 21-day R & S time period is sufficient to prepare an adequate court report.
- The average length of time given by the court to prepare an R & S report is 28.9 days.
- The defendant was not seen until 11.5 days after the initial court referral, according to our investigation case tracking.

The combination of independent raters who had current court reports (December, 1976), the general impressions of the majority of judges, and what appears to be adequate time to prepare a report strongly support our general findings on verification.

DISCUSSION

The Probation Department's client population is neither the most trustworthy nor the most competent in providing reliable information for reports to the court.

It is not appropriate in most cases to take the defendant's word on information provided. Yet, we found, in a large number of cases, the DPO writing, "the defendant reports, states, indicates," with no indication of any verification. Our findings were confirmed by the independent raters and judges in interviews.

The law requires a minimum of 21 days to prepare and submit a court report, but DPOs, in fact, have longer to do reports with the number of days ranging from 21 to 45. In addition, we found that initial interviews with defendants were not being conducted early in the investigation period. We feel this adds to the delay in receiving and verifying information.

In interviews and during the overview, we found that the Pre-trial Division usually had large amounts of information on the defendant prior to the R & S referral to the Adult Division. But, in these same interviews, we learned that this information is not routinely made available to the DPO in spite of a formal process to do so. Of those DPOs who received the Pre-trial/OR reports, only about a third used it as an information base.

In general, we found the lack of verification to be pervasive throughout the adult investigation process. The result of this is loss of credibility, and thus, poorly utilized reports by the courts. The importance of verification of information will greatly increase for felony court reports when Public Law 1170 (SB 42) goes into effect.

CONCLUSIONS

In view of our findings, we conclude that:

Verification of the information contained in court reports is inadequate due to the failure to obtain, investigate, and place verified information in the reports. This failure is due to the failure of deputies to schedule appointments early in the investigation and request, in a timely manner, verification of information obtained in defendant interviews. The lack of genuine "quality control" monitoring by unit supervisors contributes to the problem.

RECOMMENDATIONS

In light of our findings and conclusions, we make the following recommendations:

- 5) We recommend that the Department strengthen its policy on verification of information by establishing specific, measurable guidelines to be implemented by investigation deputies and monitored through the review process conducted by unit supervisors. The guidelines should address at least the following:
 - a) How verification efforts should be undertaken;
 - b) Priorities for verifiable information;
 - c) How to designate verified versus unverified information in a report;
 - d) Documentation of unsuccessful efforts to verify;
 - e) Emphasis placed on the value of field investigation.
- 6) We further recommend that the Department and the courts work out specific methods to receive defendant data early in the investigation. Specifically, we suggest that all defendants be required to fill out a brief questionnaire of pertinent information and to sign forms for release of confidential information while in the courtroom. This will allow the DPO to begin the process of data gathering and verification at the time of referral to do a thorough job. With basic defendant data and signed release forms, the DPO can begin to send for and verify important information. We suggest that the court clerk or Probation's court officer handle this task at no appreciable increase in cost.
- 7) We further recommend that the Department establish and rigorously enforce guidelines for initial defendant interviews that include the following:
 - a) Mandatory initial interview with defendant within seven calendar days from the receipt of court referral to Probation.
 - b) Mandatory notification to the court of all defendants who fail to appear for their probation interview within the first seven calendar days after referral.
- 8) We suggest, as part of a total policy, that the judges of both the Superior and Municipal Courts consider the issuance of bench warrants for those defendants who fail to report to their probation officer within the first seven days after referral of the case to the Probation Department for a pre-sentence report.

- 9) *We further recommend that all Pre-trial Services Reports - where prepared - be made available automatically to each investigating DPO at the time of referral for cases in process of investigation. Pre-trial Services Reports are a valuable source of information often neglected in the process of preparing court reports. The present informal ad hoc use of Pre-trial Reports constitutes a waste of resources.*
- 10) *We further recommend that the Probation Department continue to press for timely submission of offense statements by the District Attorney.*

3. ADEQUACY OF ANALYSIS AND EVALUATION

Analysis and evaluation of alternatives is a critical component of a good pre-sentence report to the court. OPE examined the present adequacy of the analysis and degree to which alternatives are presented to the court to inform dispositions.

We define analysis as synthesis of the presented information into a concise series of statements which make inferences, state conclusions, evaluate options, and offer alternatives to judges to inform the decisions they must make on sentencing.

FINDINGS/DISCUSSION

Our information was obtained through interview and questionnaire responses from 12 independent raters and 27 judges. The independent raters felt very strongly that the court report evaluation sections contained little substantive analysis or evaluation. The analysis was seen as unsatisfactory because of redundancy, the introduction of new information, and generally poor analysis of the presented data. The independent raters felt that in half of the reports reviewed, the conclusions were either "fairly" supported or "not supported at all" by the presented information.⁴

⁴ These conclusions are based upon an examination of 51 court reports taken from the total number of court reports produced by the Adult Division during the week of December 13-17, 1976. The 177 reports produced come from a week considered representative by the Probation Department. The 177 reports - and the sample of 51 - represented all courts and offense categories.

The majority of the judges polled (21) felt that lack of concise, pertinent analysis was the primary reason for inadequate court reports. When asked to define what constituted an excellent report, all replied that genuine analysis was critical. Some of the judges expressed dismay that the quality of reports appeared to be dropping due to inadequate analysis, thereby reducing the information available to assess the realistic alternatives to incarceration.

The lack of analysis by DPOs drastically lowers the utility of the report to judges. Because of heavy calendars, many judges have 20-30 R & S hearings on a given day. We found the average length of reports to be 4.5 pages plus attachments. Therefore, good analysis of the data by the DPOs is essential for the judge to digest all of this information, especially since reports are filed 48 hours or less prior to the R & S date.

CONCLUSIONS

In view of our findings, we conclude that:

Adult investigators are not providing genuine analysis of the information they present in adult pre-sentence court reports. There is little analysis and evaluation provided in reports that lead to specific alternatives for consideration by the bench. This has resulted in court reports that are of reduced value to the bench and to the probation officers who will eventually supervise the defendants.

RECOMMENDATIONS

In light of our findings and conclusions, OPE makes the following recommendation:

- 11) *We recommend that the Adult Division set up specific criteria and standards for report analysis and that these standards be rigorously enforced through report reviews by unit supervisors.*

4. ADEQUACY OF REVIEW PRIOR TO SUBMISSION TO COURT

"Quality control" is a key element of investigation reporting to the courts.

The unit supervisors in the Adult Division are given the formal responsibility to oversee the reports produced by deputies prior to submission to a specific court. Due to the importance of this review process, OPE examined it in terms of quality, thoroughness, and effects on the usefulness of reports to the court.

FINDINGS/DISCUSSION

In general, we find that there is insufficient review of court reports by unit supervisors. In this context, we define review as reading of the report by unit supervisors and return to the DPO to correct any errors or inconsistencies prior to filing of the report. This lack of proper review results in the filing of reports of uneven quality and limited utility to the bench and supervising DPOs.

Our findings are confirmed through interviews and questionnaires given to judges, probation staff, and independent raters. In addition, our information comes from a sample of 177 R & S reports produced by the Adult Division.

Although there is a system of review and sign-off by unit supervisors, there are strong disincentives to request court continuances in order to correct inadequate reports. In addition, the only filing requirement by the Probation Department is 48 hours prior to the R & S date.

Specifically:

- Sixty-three percent of the DPOs file their reports 24-48 hours prior to the R & S hearing; thereby, leaving little time for any review by unit supervisors and no time for corrections.
- There is no department policy on when reports should be submitted to unit supervisors for review; it is presently left to the supervisor's discretion.

- The average period for an R & S investigation is 28.9 days - sufficient time for production and review of court reports, according to DPOs.
- Despite the fact that the role of adult unit supervisors explicitly includes review of court reports prior to submission, most deputies *do not appear to want* feedback from their supervisors on the adequacy of the court reports they produce. (Appendix, Section 4.) Interview results suggest this reluctance *may be due* to a lack of DPO confidence in unit supervisors or a concern that unit supervision is a form of management control which has no positive effects on their work.

The independent raters felt that the reports they read lacked adequate review as illustrated by the inconsistencies in the reports and the large number of inadequate reports.

Six out of twenty-three judges felt that unit supervisors did not adequately review court reports, while twelve out of twenty-three made no comments due to their lack of knowledge of what role the unit supervisors play.

The result of an inadequate review system is a reduction in overall quality and utility and a reduction in the credibility of the Probation Department in the eyes of the courts.

CONCLUSIONS

In view of our findings, we conclude that:

There is a lack of consistent and thorough review of pre-sentence reports by unit supervisors which results in the filing of reports of uneven quality by the Probation Department to the Superior and Municipal Courts.

RECOMMENDATIONS

In view of our findings and conclusions, OPE makes the following recommendations:

- 12) *We recommend that uniform standards be set by the Department for all court reports and that these standards be used by unit supervisors in their review of court reports.*
- 13) *We further recommend that the Probation Department set a policy that requires all court reports to be submitted to unit supervisors five working days prior to the court filing date for review.*

5. DEGREE OF FEEDBACK ON PERFORMANCE

OPE evaluated the feedback investigating DPOs received from judges and supervision DPOs regarding the usefulness and quality of court reports they produced.

Feedback is the procedure whereby the users of court reports, on a regular basis, generally and specifically provide the investigation DPOs with comments, criticisms, and suggestions about the utility and content of court reports.

FINDINGS/DISCUSSION

In general, we found that the judges have no formal procedure to feedback information to line DPOs about their court reports. This concerned most of the judges because they were unable, except in unusual circumstances, to provide investigating DPOs with information about court report utility and content.

Our findings were confirmed through a questionnaire administered to DPOs and through interviews with the judges and DPOs. The judges reported that they had two means of feedback: the court officer and the probation management. Many judges were reluctant to use either of these sources for two reasons:

- They felt it might put a black mark on an individual DPO's record.
- They were afraid that comments about specific reports would be taken as a policy statement for all future reports.

The DPOs indicated that they received very little feedback from judges but that over 66 percent of them wanted a formal feedback process.

The implications of this failure to have a feedback system are that court report content and utility suffers. The judges have no regular means of providing criticisms and comments that is free of unwanted sanctions or policy interpretations. As a result, valuable information from a major user about the court reports is routinely lost.

We found no formal feedback mechanism, in practice, between investigating and supervision DPOs. We found that any feedback which may occur was fragmented and only in terms of an exceptional case.

Our findings were confirmed by interviews with DPOs during the overview process and during the evaluation period. We also obtained information from the DPO questionnaire. When we asked the DPOs if they wanted a formalized feedback section on the court report:

- Forty-three percent of the investigating DPOs responded "yes,"
- Fifty-two percent of the supervision DPOs responded "yes."

This was underscored in our interviews. Many of the investigating DPOs were concerned that they were not aware of the usefulness of their court reports to the supervision DPOs as well as to the judges.

The failure to have a formal feedback system results in a loss of valuable quality and utility information from a major user of court reports.

CONCLUSIONS

In view of our findings, we conclude that:

- 1) *There is insufficient feedback from the judges to investigating DPOs about court report adequacy and content. This results in uncertainty among the investigating DPOs as to the utility and adequacy of their reports to the judges.*
- 2) *We further conclude that there is insufficient feedback between supervision and investigation deputies about the content and utility of the court reports for supervision.* This results in a lack of knowledge, on the part of the investigating DPO, about what information in the report is useful or useless to the supervision DPO. In addition, it results in the investigating DPO not knowing about the accuracy of his observations and prognosis for a defendant.*

RECOMMENDATIONS

In light of our findings and conclusions, OPE makes the following recommendations:

- 14) *We recommend that a detachable comment sheet be placed on each original copy of the court report to be completed by the judge at or before the court hearing and returned to the DPO who wrote the report. This feedback sheet should consist of a small number of quality check-off items and a section for general comments about the adequacy of the report. This is most useful where complete R & S reports are submitted.*
- 15) *We further recommend that regular court/probation meetings be set up in all jurisdictions to provide generalized feedback, from probation to courts and vice versa, on adequacy of reports for dispositions. This information would then be disseminated to the line DPOs. OPE feels that this function can be accomplished best at the unit supervision level in the various jurisdictions.*
- 16) *We further recommend that a formal court report feedback system be set up between investigation and supervision DPOs. This system would take two forms. The first form could be a feedback sheet which would be filled out by supervision DPOs on each case and returned to the investigating DPO after a specified period of supervision (e.g., 90 days). The sheet would be composed of specific check off ratings and a general comments section. The second form could consist of staff meetings between investigators and supervisors, at least twice a year, on a unit-by-unit basis. This feedback would be generalized and deal with any major changes that may be needed for the entire process.*

* Organizational recommendations in Chapter I will ameliorate much of this problem.

6. CLARITY OF POLICIES AND DIRECTION

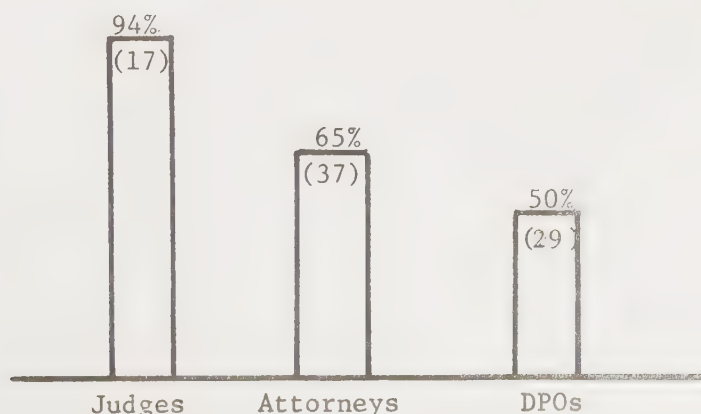
Efficient production of thorough court reports is predicated on receiving clear policies and directions. Investigating deputies need up-dated guidance in order to handle the requests of a number of different courts. To assess this aspect of the investigation process, OPE examined the Department's policy statements and those of the courts.

FINDINGS/DISCUSSION

In general, we find that the Probation Department has not clearly stated or clarified its policies on court reports and the process of adult investigation to its staff or the other members of the criminal justice system. In turn, we find the courts to be fragmented and inconsistent in their statements about policy direction for probation investigation. Fragmentation and inconsistency exist in both the Superior and Municipal Courts as they do not speak with "one voice." DPOs reported that each judge had his own peculiarities and that each jurisdiction had its own policies, often contradictory to other jurisdictions.

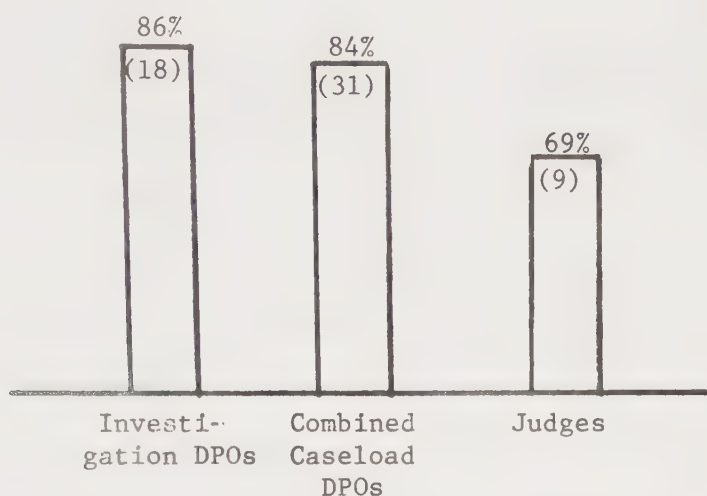
SPECIFIC FINDINGS

Our findings are confirmed through interviews and questionnaire responses from judges, attorneys, and DPOs. We find that of those polled, the following people have *not* received a "clear statement of the goals and objectives of adult investigation" from the Probation Department.



In addition, the majority of the judges report that the Department has made no attempts to personally inform or update them about policies in regard to court reports.

In interviews during the overview, case tracking, and general feedback sessions, DPOs stated that the courts did not speak with "one voice." They reported that each judge had his own peculiarities which made it very difficult to write consistent reports easily. We received the following responses to our statement, "Differing court expectations from the court make it difficult for the DPO to prepare court reports."



Court and individual judges' policies on sentencing were rated as "very" or "fairly" important factors for court report writing by the following respondents:

	<u>Court Policies</u>	<u>Individual Judges' Policies</u>
Judges	57% (9)	59% (10)
Public Defenders	71% (10)	50% (7)
District Attorneys	71% (12)	65% (11)
Private Attorneys	85% (11)	85% (11)
Combined Caseload DPOs	65% (24)	51% (19)
Investigating DPOs	67% (14)	43% (9)

The result of these policy inconsistencies and the importance placed on them by most respondents strongly support our contention that clear, consistent policies should be developed and followed. Failure to do so results in wasted manpower and greater difficulty in preparing court reports.

In addition, with the advent of Public Law 1170 (SB 42), clear policy statements from the Superior Court are essential if the court wishes to have a product it can trust and use for sentencing under the determinate sentencing law.

DISCUSSION

Constantly shifting policy statements by the Probation Department also have a detrimental affect on staff morale. There are few incentives to provide a quality court report when deputies see management unwilling to take a firm stand or to take risks in relating to the courts. This, in turn, lowers the credibility of court reports in the eyes of the courts. The judges become dissatisfied with the staff's product and either turn to other information sources or react with non-coordinated policy statements about report needs.

CONCLUSION

In view of our findings, we conclude that:

Despite the presence of Department policy statements about the investigation process, most Probation staff, judges, and attorneys are not truly cognizant of the policies of the Probation Department. This is due to fragmented and, in some cases, non-existent policy guidelines from the courts on the one hand and an unwillingness on the part of the Probation Department to take a strong stand with the courts to resolve policy issues, on the other. This results in the Department constantly changing its policy to meet individual court's needs. The constant pressure to be everything to each court, in turn, reduces the ability of DPOs to glean out pertinent data, perform genuine analysis, pose realistic alternatives, and make credible recommendations. Recognizing the problem, the Adult Division has recently initiated some positive developments in this area.

RECOMMENDATIONS

In light of our findings and conclusions, OPE makes the following recommendations:

- 17) *We recommend that the Probation Department actively seek clear policy guidelines from the courts, clearly define to the courts its roles and limitations, and take firm stands on policy issues that the Department feels are essential to the efficient performance of the investigation process. We believe that the recent Probation-initiated activities with Oakland Municipal Court and the Superior Court are very positive efforts that should be continued and expanded.*

7. THE COURT OFFICER SYSTEM

OPE briefly examined the court officer system to determine its effectiveness in meeting the needs of the courts and the Probation Department.

FINDINGS/DISCUSSION

At present, each court has assigned to it a probation officer whose job is to present court reports to the court and facilitate communication between each court and the Probation Department.

We learned that the judges and DPOs felt the court officers were very responsive to their various needs. The vast majority of the judges (94 percent) felt that the court officer was generally responsive and provided the one constant line of communication on which they could depend. When asked about problems in the system, no judge felt the process was bottle-necked by the court officer. However, 64 percent of the DPOs want feedback about their reports from court officers. In general, we found that judges and DPOs have a positive assessment of the court officer system.

CONCLUSIONS

In view of our findings, we conclude that:

- 1) *The court officers system is providing excellent service to the courts, allowing an effective line of communication to be maintained between the courts and adult probation.*
- 2) *We commend the efforts that have been made by the Probation Department to provide an efficient court officer system to the courts. We urge that this system be maintained at its present high level to insure a constant line of communication between line DPOs and judges.*
- 3) *We conclude, however, that the court officer system could provide more systematic and consistent feedback to the investigation deputies responsible for producing court reports.*

RECOMMENDATIONS

In light of our findings and conclusions, OPE makes the following recommendations:

- 18) *We recommend that the Department establish a formal system - through court officers - for providing routine feedback on judges' comments about court reports produced by the Department's investigation deputies. The objective of this system is to formalize and expand the information these deputies receive about the reports they produce.*
- 19) *We further recommend that the Department continue the present court officer system.*

8. EFFECTS OF NEW DETERMINATE SENTENCING LAW

Public Law 1170 is known as the Uniform Determinate Sentencing Act of 1976. It will go into effect on July 1, 1977. This law abolished California's indeterminate sentencing law and requires the Superior Court to sentence defendants to specific low, medium, or high terms. These terms are determined on the basis of mitigation (lower term) or aggravation (higher term). In addition, the term can be lengthened by enhancements (i.e., previous convictions for same or similar offenses).

FINDINGS/DISCUSSION

Our basic finding is that the importance of the adult court report will be much greater for the Superior Court with the implementation of Public Law 1170. Every Superior Court judge we interviewed saw the court report as increasing in importance, regardless of whether or not they felt that it would be used in aggravation, mitigation, or enhancement. In addition, some felt that the investigation function would gain markedly in importance over the supervision process.

We obtained our findings from interviews with the Superior Court judges and study of the rules recommended and tentatively adopted by the California Judicial Council's Sentencing Practices Advisory Committee, in regard to SB 42.

All documents regarding SB 42 stressed the fact that court reports would become more important, and that importance would be recognized by the fact that the report will be made a factual part of the court record.

SPECIFIC FINDINGS

- Section 12.5 added to the Standards of Judicial Administration by the California Judicial Council (May, 1977) specifically details the contents of pre-sentence investigation reports in light of the new determinate sentencing law. Specifically, Section 12.5 outlines the precise information to be included, the need for analysis of sentencing alternatives, and verification. Justifications for recommendations are mandatory and must relate to specific elements in the report.
- Rule 437 adopted by the Judicial Council places the major emphasis on the probation report in determining aggravation and mitigation for specific cases.
- Rule 33 states that the report of the probation officer will be included in the record in the application for new trials.
- All Superior Court judges polled by OPE feel that the report will need to have more accurate, verified information in light of the new law.
- At least 50% of the Superior Court judges believe that aggravation, mitigation, and possible enhancements will be decided primarily on the information contained in the probation report.

- Recent discussions with intake staff at NRC, Vacaville, indicated that the Probation Officer's report will become the primary document upon which they base their defendant evaluation and institution assignment. They further indicated that this has been made policy in some of the institutions. They emphasized a great need for accurate, verified data and good analysis.

We feel that the law and the Judicial Council rules are quite specific in the importance they place on the court report in the sentencing of defendants, although some Alameda County judges feel that the mitigation/aggravation aspects will be negotiated rather than determined by the probation report. We feel that the accuracy, verification, and analysis should be good, in any case, and that the Probation Department should assume "the worst" and prepare themselves to produce highly accurate and complete reports which will be used quite extensively by the courts in felony cases.

CONCLUSIONS

In view of our findings, we conclude that:

Public Law 1170 (SB 42) will increase the importance of court reports provided to the Superior Court due to the specific requirements to provide accurate information to the judges for determination of aggravation, mitigation, and enhancements for sentencing.

RECOMMENDATIONS

In light of our findings and conclusions, OPE makes the following recommendations:

- 20) *We recommend that the Probation Department establish specific guidelines for production of court reports and utilize the suggestions of judges, the District Attorney, Public Defender, and Private Attorneys in the establishment of these guidelines.*
- 21) *We further recommend that the guidelines reflect the differences in need of the Municipal and Superior Courts and the differences in information needed for specific categories of offenses. Where possible, short forms should be utilized.*

CHAPTER IV

ADULT SUPERVISION

IV. ADULT PROBATION SUPERVISION

INTRODUCTION

Supervision of adult offenders is the second crucial service provided by the Adult Division of the Probation Department. Supervision is the set of activities which take place when an offender has been placed on probation by the court. The probationer is assigned to a deputy probation officer (DPO) who is responsible for assisting him in meeting the specific conditions under which his probation was granted. Supervision rests on the assumption that recidivism is most likely to be reduced if the probationer is provided with a program of individualized services.

Approximately 11,000 adult offenders are currently under field supervision in Alameda County. Nearly all of the support for supervision activities comes from the county's General Fund. Adult supervision represents 47 percent of the budget of the Adult Division and 11 percent of the budget for the entire Department. According to CAO estimates, the expected budget for FY 1977-78 is \$1,747,672.

In recent years, the effectiveness of probation supervision has been seriously questioned. Key concerns focus on optimum caseload sizes, classification of offenders for differential caseload management or treatment, minimum versus intensive supervision, and recidivism. Our evaluation addresses these issues by describing the process and practice of supervision in Alameda County and determining the relationship of the process to the results of supervision.

OPE conducted a follow-up study on a random sample of 330 probations granted during calendar year 1973. Following the probationers up to December 31, 1976, allowed us to examine a number of questions related to probationer characteristics, differences between types of supervision caseloads, and supervision services

provided. Our goal was to relate a number of key factors in these areas to the actual results of adult supervision as measured by recidivism. A detailed description of the approach used, the analyses, and the specific results are contained in Section 22 of the Appendix.

The results from this impact analysis, combined with data from other parts of the evaluation, helped us address the following questions:

- Should we continue to supervise adult offenders on probation?
 - If so, who and under what conditions?
 - If not, what are the alternatives?

This section of the report is organized into three parts:

- First, we describe the process of field supervision: 1) what services are provided, for whom, and how often; 2) what tools are available to probation officers to assist in supervision; and 3) how do probation officers use their time in supervising probationers.
- Second, we describe a representative sample of probationers;
- Finally, we relate these two parts to the results of supervision.

Note: Reference to tables in the following text refer to tables in Chapter 22 of the Appendix.

Part I.

PROCESS OF ADULT SUPERVISION

INTRODUCTION

Our evaluation of Adult Supervision examined the process by which supervision is provided. Through interviews, questionnaires, and observations, the evaluation team looked at the following key parts of the process:

- Expectations and observations of judges who sentence adult offenders to probation supervision;
- Adequacy of case review procedures;
- Use of petitions for early termination, revocation, and modification of probation conditions;
- How probation deputies allocate their time in supervision of adult offenders;
- How probationers perceive their experiences with supervision.

Our findings and conclusions for each of these five areas follow.

OBSERVATIONS AND EXPECTATIONS OF JUDGES

Alameda County judges do not agree on what adult supervision is or should be. Although all of the 27 judges polled had clear priorities on what information was useful in pre-sentence reports, no clear pattern emerged regarding supervision. Although no explicit priorities were expressed, most judges *appear* to place a high value on public protection since concern was consistently expressed regarding the need for greater monitoring, surveillance, and follow-up activity by field supervisors. This is consistent with the *goal* for probation most frequently chosen by judges: public protection. What is interesting is that while the goal is fairly clear, the practical expectations are less consistent.

Most judges appear to hold a number of contradictory impressions regarding adult supervision. While most recognize the constraints of heavy caseloads that limit what can be realistically accomplished in supervision, there appears to be a lack of understanding by judges of what actually occurs in supervision. Many judges expressed anxiety over the supervision process - especially about the degree of follow-up that actually occurs. Although interest is expressed in rehabilitation-oriented efforts, *most judges conclude, by experience, that supervision is primarily a monitoring activity with very little counseling or referral to community-based programs.* Their intuitive judgement is borne out by our study of adult supervision activity. Judges clearly feel that supervision should be more aggressive and thorough, particularly in terms of monitoring and follow-up.

Nearly all 27 judges in their responses indicated a need for setting priorities, establishing different levels and intensities of supervision, and increasing referrals to community programs. Specifically, judges made a host of recommendations directed toward supervision, including:

- Use of caseload classification;
- Intensive supervision early in the probation term; decreasing supervision later;
- Increased emphasis on follow-up;
- More aggressive monitoring.

All judges polled expressed a sensitivity to two critical issues that are the primary factors affecting success in their minds. These are: The degree to which the defendant feels "in jeopardy" while on supervision and the degree of motivation and constructive attitude expressed to the probation officer.

CASE REVIEW

Our analysis confirmed that the Probation Department's process of channeling probationers into general and specialized caseloads was, in fact, a rational and accurate process; "tougher" offenders do end up in special caseloads. We also learned that they do not receive special attention beyond an increase in the frequency of monitoring. Clearly, some form of case classification goes on in the Department. However, a premium appears to be placed on "leveling" the workload as opposed to tailoring activities to specific types of offenders.

The importance of case review has greater implications in light of these findings. Although the Department has a formal case review procedure on the books, we found that on the basis of information obtained through questionnaires¹:

- Only 39 percent of supervision DPOs go through a case review with their unit supervisor after the first 90 days of a case. Another 19 percent go through a case review only when they request it. No consistent case review occurred for 38 percent of the DPOs.
- Sixty-two percent (60) deputies find their case review sessions to be only somewhat or rarely helpful.
- Sixty-nine percent (66) state that they do enter a planning summary into the log for each probationer under their supervision. *This is contradictory to our experience*, based upon review of over 100 files of persons granted probation in 1973.
- Consultations with unit supervisors regarding specific cases are infrequent and sporadic. However, 32 percent do seek consultations when they receive a case and when they request a change in the probationer's status. Twenty-seven percent state that consultations occur "rarely" or "once in a while." Consultations are usually at the initiative of the DPO (61 percent).
- Although unit supervisors are not generally sought out for case consultations, most DPOs (56 percent) usually seek out their fellow DPOs on an informal basis.

¹ DPO series questionnaire - 94 percent returned (96 responses from Supervision deputies).

- Great confusion exists on how clearly outlined the guidelines are for case review.

Not clear	:	35 percent
Clear in some circumstances:		28 percent
Usually clear	:	34 percent

- DPOs do not see their unit supervisor as having a monitoring role over the adequacy of supervision: 82 percent see *themselves* as having primary responsibility for monitoring their own supervision activities.

These findings point to a clear need for a rigorous, relevant, and understood process of case review that is tailored to the needs of probation deputies for guidance in allocation of time and matching of probationer needs and community resources.

CONCLUSION

We conclude that case review procedures do not exist in the Adult Division to any practical extent or to any significant degree.

RECOMMENDATION

- 1) *We recommend that the Adult Division re-examine its formal written case review procedures with a focus on making revisions that will increase the value of the procedures to deputies and increase the presence and value of periodic planning summaries and status reports.*

TOOLS OF PROBATION SUPERVISION: EARLY TERMINATION, REVOCATION, AND MODIFICATION OF CONDITIONS OF PROBATION

During the course of supervision, it is the deputy's responsibility to inform the court of any changes in a probationer's status that merit consideration in light of the characteristics of the offender or the nature of the offense. Information takes a number of forms:

- 1) A probationer may violate a condition of probation that warrants a recommendation from the DPO to the judge to revoke the probation and sentence the probationer.

- 2) A probationer may be doing very well and the deputy may wish to recommend that the probationer be given the opportunity to have the probation period terminated as a reward for good behavior.
- 3) Specific probation conditions, in light of experience, may no longer be relevant or new conditions might need to be imposed.

We discuss each of these "Tools" of supervision below.

EARLY TERMINATION

Although most probation deputies feel they have a great deal of discretion in recommending that a probation be terminated early for reasons of exemplary client behavior, few actually recommend such action to a judge.

Supervision deputies were asked how often they used early termination as a "tool" in the process of supervision. Only 19 out of 96 field deputies (20 percent) said they used it "fairly often," 42 out 96 (44 percent) said "sometimes," and 25 out of 96 (26 percent) said "rarely." In fact, in our sample of 1973 probation grants, early termination was recommended in only 38 out of 330 cases.

These results are not surprising when compared with the absence of guidelines for recommending early termination. There is no consensus on 1) who has responsibility for defining the guidelines, or 2) what guidelines, in fact, should be used. Of those DPOs who stated that guidelines were only partially clear or not clear at all (67 percent), nearly half stated that the main problem is lack of a consistent policy from the courts. Although the Probation Department is one body that could conceivably provide guidelines for when to submit a request to the court to terminate a probation early, only 10 percent of the supervision deputies perceive this to be the Department's responsibility. It is interesting, however, to speculate whether these perceptions explain the low usage of early termination as a supervision tool.

When DPOs are asked why they recommend early termination seldom or rarely (66 percent), the primary reasons cited are:

- 1) "The people on my caseload are simply too difficult - the risk is too high."
- 2) "Most of the people on my caseload are *not motivated* enough to warrant early termination."

The use of early termination as an incentive to probationers is not discouraged by the Department (most DPOs state they have never had a petition denied by their unit supervisor), but it also is not promoted. This neutral attitude does not extend to the bench, however: More than half of all supervision deputies have had a petition denied by the bench. Although most judges polled feel that DPOs have no motivation to file, this fact does not mean that judges are necessarily interested in receiving early termination petitions. Most judges who responded indicated that they would grant early terminations, in most cases, if the recommendations were based on demonstrated progress by the probationer. *Some* judges expressed a different point of view; supervision should continue for the full length of the probation period since "good behavior" is expected for someone who is granted probation.

The revised adult manual does not state how early termination should be used, for whom, and under what circumstances. In discussing early termination with unit supervisors and field deputies in group sessions, most of these findings were substantiated.

SUMMARY

Early termination for good behavior is one of the tools that a supervision deputy has at his disposal as part of the process of supervising adult offenders.

In practice, the following conclusions are evident from our data:

- 1) *Most DPOs are not encouraged to recommend early termination for probationers that have met the conditions of probation.*
- 2) *The reluctance of DPOs to consider and recommend early termination is due to:*
 - a) *lack of clear "signals" from the courts,*
 - b) *absence of guidelines from the Department, and*
 - c) *a perception that most offenders are either too risky or not motivated enough to warrant consideration.*

Field supervision deputies, quite naturally, tend to avoid the issue since no clear guidelines are available from the Department and no clear "sense of the court" exists.

If early termination is a useful supervision tool, then it must, in fact, provide an incentive to probationers to stay clear of violations *and* must also be an attractive alternative to the supervision DPO, Probation management, and the courts. For example: If early termination is not defined as an incentive to good behavior, why should the probationer act so as to achieve it?

If DPOs only get more cases - usually worse and always unfamiliar - why should they recommend early termination?

If the Department fails to receive encouragement from the courts, why should the Department formally foster its use?

If the courts don't get feedback on supervision success or don't see a rationale in the way a probationer is supervised, why encourage early termination?

CONCLUSION

Early termination is not used as a supervision tool, nor is it necessarily seen as an incentive to good behavior by the Department or the courts.

MODIFICATION OF PROBATION CONDITIONS

Modification of probation conditions is the key tool available to a probation deputy to tailor the specific terms of a probation to the probationer based on experience. Unlike early termination, almost half of all supervision deputies recommend modifications "fairly often." Clearly, incentives exist for requesting modifications that do not exist for early terminations or even revocations.

Modifications frequently take the form of adding drug testing conditions, jail time, reducing the amount of a fine, or substituting volunteer work for a fine. Although the use of modifications allows for changes in light of a new situation, it can also be used by probation deputies to reduce their level of effort in a case. Strong incentives exist for a DPO, for example, to request substitutions of park work for fines or reductions of fines in response to a failure of a probationer to comply. Such substitutions reduce the need for close monitoring of a probationer's compliance with financial conditions. This is especially the case if a financial condition has not been met toward the end of a term of probation.

REVOCATIONS

Revocation of a defendant's probation is the final action that makes the possibility of jail a reality for an offender. Although revocations are expected by the courts, over a third of the Department's supervision deputies do not feel that the guidelines for filing revocation petitions are clear or consistent.

This is especially true for deputies who serve the Municipal Courts.

Contrary to our initial impressions, most probation deputies (69 percent) *usually* feel free to initiate discussions of revocation petitions with judges. This is encouraging since our findings also show that judges will be inclined to revoke a probation for many different reasons; no clear pattern exists. These conversations and some guidelines appear to make a difference. Nearly all probationers we polled (91 percent of our sample of 925) state that they know what they can and cannot do on probation. The grounds for revocation are apparently clear to them.

Unlike early termination and modification petitions, revocation petitions are usually filed with a clear idea of what 1) a judge expects, 2) the Department will support, and 3) the defendant anticipates. The problem arises when the judge refuses to concur with the DPO's recommendation. Although denial of a revocation has no appreciable effect on the probationer-DPO relationship (according to questionnaire results), it clearly effects the deputies' *morale*. It is our feeling that denials of petitions to revoke also can demean the supervision process by undermining the credibility of the probation officer in the eyes of the probationer.

HOW SUPERVISION DEPUTIES USE THEIR TIME

OPE assessed how DPOs utilize the time available to them using three distinct methods. First, through evaluation of reporting card entries made by deputies on the probationers who constituted our 1973 follow-up random sample, we were able to determine the frequency and nature of supervision activity provided. Second, in staff questionnaires administered to all adult field deputies, we *asked* DPOs how much time they spent in 13 distinct categories. Third, through direct observation of ten days of supervision, the OPE team gained a first-hand sense of what

constitutes a supervision deputy's day.

Our findings:

- 1) Through examination of reporting card entries, 80 percent of all supervision activities are either direct or indirect monitoring. By this we mean:

- Face-to-face or collateral contacts aimed at surveillance and "checking-up" on the probationer.
- Testing and collection of fines or restitution.
- Administrative actions including filing of petitions, monitoring flash notices on criminal involvement, etc.

- 2) Through staff perceptions:

The paperwork requirements of the Department and the courts constitute a major impediment to increased direct supervision. Supervision deputies spend a substantial amount of time in administrative activity related to people they supervise. Slightly more time is spent in administration than is spent in actual direct supervision of probationers.

The following table provides the *average amount of time* supervision deputies spend in each of 13 activities. The figures represent an average based on 176 hours available per month. The tabulations are based on the reports of 58 valid responses out of a possible 96.

- 3) Through direct observations of supervision deputies over two consecutive days each for a total of ten days in February and March, 1977:

We found that most direct supervision contacts were monitoring in nature and took about 20 minutes each. In many instances, however, the DPO used the time available to make the probationer aware of the consequences of his actions. Nearly all deputies had to make and receive numerous phone calls regarding future

THE ESTIMATED TIME SUPERVISION DEPUTIES SPEND IN VARIOUS ACTIVITIES PER MONTH (176 HOURS/MONTH ALLOCATED) REPORTED FROM STAFF QUESTIONNAIRES*

IV-13

DUTIES	SPECIFIC ACTIVITIES	AVERAGE NO. OF HOURS PER MONTH	AVERAGE PERCENTAGE OF HOURS PER MONTH	
			%	Bar Graph - %
				10 30 50 70 90 0 20 40 60 80 100
ADMINISTRATIVE	• Preparation of court reports (R & S, Revocation, Progress Report, etc)	41	23%	
	• Court Appearances	5	3%	
	• Preparation of Monthly Stats	3	1%	
	• Maintenance of Case Records	19	11%	
	PERCENTAGE OF AVAILABLE TIME FOR ADMINISTRATION PER MONTH		38%	
DIRECT SERVICES	• Personal and telephone contacts with Probationer	50	28%	
	• Collateral contacts	8	5%	
	• Community Resource Agency contacts	7	4%	
	PERCENTAGE OF AVAILABLE TIME FOR DIRECT SERVICES PER MONTH		37%	
MISCELLANEOUS	• Meetings (Not case-related)	5	3%	
	• Consultation with Unit Supervisor	3	2%	
	• Training	5	3%	
	• Vacation, sickleave, leave without pay, comptime	7	4%	
	• Lunches, coffee breaks, etc.	19	11%	
	• Other (Miscellaneous)	8	5%	
	PERCENTAGE OF AVAILABLE TIME FOR MISCELLANEOUS DUTIES PER MONTH		28%	

TOTAL

180

103%**

* Combined and divided case report estimates were similar. Data based on 58 valid responses out of 96 possible for a 60 percent response rate.

** 3 percent over due to rounding.

interviews or the status of probationers. Administrative tasks took a substantial amount of time per day. Each DPO had to contend with drop-ins, no shows, and excessive waiting time to interview at the courthouse jail, Hayward, or Santa Rita.

4) Through questionnaires administered to probationers regarding their perceptions of their probation experience:

Nine hundred and twenty-five probationers responded to an OPE questionnaire that asked eleven questions regarding their experiences on probationer supervision.

The key findings are:

- Nearly half of all probationers talk to their DPO about once per month. (47.9 percent.)
- Nearly all interviews (by phone or face-to-face) are either less than 15 minutes (27 percent) or about 30 minutes (55 percent). The Department's estimate is 34 minutes.
- Most probationers usually try to talk to their DPO about problems and generally feel better afterward. In these conversations, three subjects appear to be frequently discussed by more than 40 percent of the probationers. Feelings about personal life, family, or concerns over finding a job are the main topics. For another 30 percent of our sample, feelings about: a present job, money, drinking, a wife, a girlfriend, a husband, a boyfriend, or probation comprise relatively frequent conversations.
- Nearly all probationers (94 percent) know *why* they are on probation and also state that they know what they can and cannot do while on probation (91 percent).
- Most probationers state that the probation officer discussed with them what the court report would state about them (56 percent) and what the recommendations will be in their case (60 percent).

ASSESSMENT

Empirical review, observation, and staff and probationer estimates are in general agreement that the proportion of time spent in direct supervision services is limited in comparison to administrative and miscellaneous duties. When direct service is provided, the activity that predominates is monitoring, although probationers perceive these contacts as opportunities to discuss employment issues, and personal feelings about themselves and their family. The limited amount of time spent per contact (about 15 to 30 minutes) cannot, however, allow in-depth exploration of these important issues.

Probation officers and judges appear to be effective in getting across to probationers why they are on probation and what probation means in their case. Most probationers have had the benefit of knowing - directly from the probation officer - what would probably happen in their case.

Part 2

WHO ARE THE PROBATIONERS RECEIVING FIELD SUPERVISION? - A DESCRIPTION

Our sample of 330 adult defendants were granted probation with field supervision during calendar year 1973². The sample is comprised of 82 percent males and 18 percent females with an average age of 31 years (Table 2). Approximately 50 percent of the group, however, was younger than 27 years. The sample is more or less evenly split between white and black defendants who made up approximately 90 percent of the group. The remaining 10 percent were mostly Hispanic.

The probation profile (Table 3) for the sample revealed about 18 percent felony and 81 percent misdemeanor convictions. The average probation grant was 2.3 years; 75 percent of the sample received 2-3 year grants. Defendants received an array of probation conditions (Figure 1) with several conditions consistently granted.

The probationers in our sample were very similar to the *present* adult caseload on age, sex, ethnic distribution, and distribution of offenses. There are somewhat fewer felony convictions for our sample than there are in the present caseload. This lower percentage results from the sampling procedure which focused on *referrals* to probation in 1973. In comparison, the percent of felony referrals for calendar year, 1975, was only six percent higher than that of our sample.

CLASSIFICATION OF PROBATIONERS

A profile of defendant characteristics based on eleven factors relating to the conviction offense, social factors, and prior criminal record was developed to

² The sample was randomly selected from all new felony and misdemeanor grants and allows statistical confidence in the results at approximately the 94 percent level of significance. Table and Figure numbers refer to tables in the Appendix Section 22 unless tables are displayed in the report.

describe the group.³ A high score on our classification means that the probationer had a more negative rating on the eleven factors and thus presents a more "difficult" supervision case.

We found that sex and ethnicity made a statistically significant difference in defendant profile ranking. Females had a higher total score which was strongly influenced by their social factors. This is primarily due to the fact that females tended to be unemployed or only sporadically employed. They are not likely to be enrolled in school and tended to have had more serious family problems during childhood in comparison to males. For males, the severity of prior criminal record is more important in explaining high classification scores.

When profiles were compared for ethnicity, we found marked differences between white and minority defendants. Black defendants, in particular, had higher scores on conviction offense, social, and prior record factors. Their prior record was significantly more serious in comparison to white defendants and others. This finding may reflect differences in socioeconomic conditions and the circumstances they foster, or it may reflect possible differential treatment in the criminal justice system. Our evaluation did not address these issues.

PROBATIONER PROFILE

We divided the sample into three groups corresponding to their scores on the eleven defendant characteristics. This classification allows us to identify three composite profiles that relate to the defendant's seriousness of prior criminal behavior, risk of further criminal behavior, and the intensity of supervision anticipated. For clarification, we present below profiles of typical defendants within each classification group. A *low group defendant* is thus

³ For a detailed description of the profile of defendant characteristics, see Section 22 of the Appendix.

characterized by a conviction offense of relatively low severity, such as a misdemeanor, in which there were no co-defendants and in which he was released on or prior to sentencing. He had few apparent family problems during childhood and was enrolled in school and/or regularly employed over the year prior to arrest. His prior record is not very serious with, at most, a misdemeanor conviction.

A *medium group defendant* was convicted of a relatively more severe offense (such as auto theft) in which a co-defendant may have been involved, and he was also likely to have been released on or prior to sentence. He had minor to moderate family problems during childhood and irregular employment stability over the year prior to arrest. His prior record is more serious with about one felony arrest, three misdemeanor convictions, and two jail sentences.

The *high group defendant* was convicted of a much more serious offense, such as robbery, in which one or more co-defendants were likely involved, and he was held in custody about one month or more at the time of sentence. He had moderate to sporadic employment, if any, over the year prior to arrest. His prior record is a serious one with about one or more felony arrests, one or more state commitments, four or more misdemeanor convictions, and three jail sentences.

We found that our classification accurately reflects the court of sentence. The proportion of Superior Court cases increased from 12 percent in the *low* group to 54 percent in the *high* group. Presumably more serious offenders are remanded to the Superior Court. Conversely, the proportion of the Municipal Court cases decreased from 37 percent in the *low* group to 25 percent in the *high* group.

RANKING BY SOCIAL CONTROL

In order to get another perspective on the classification of probationers, we rank ordered the 17 fixed conditions of probation in terms of the perceived degree of social control by investigating deputies and the bench. This ranking, in order of increasing control, was defined by constraints on the defendant's behavior and freedom of movement (Table 23). The least controlling condition was, "obey all laws of community and be of good conduct;" the most controlling condition was, "county jail."

We found that the social control ranking provided support for our defendant group classification. Increasing social control was strongly associated with higher scores on conviction offense and social factors. It was not, however, very strongly associated with prior record. This finding suggests that conviction offense factors and social factors were more important in restricting defendant's behavior under field supervision in comparison with factors relating to prior criminal record.

SUPERVISION SERVICES

The supervision Reporting Card provided a log of defendant contacts and case management activities that occurred during the supervision of the probationer. For analytical convenience, each log entry was classified as one of the following five activities:⁴

- 1) Monitoring - Direct: Phone or personal contact with the defendant. The focus is on enforcing and verifying compliance with conditions of probation and early detection of probation violations, gross misbehavior or behaviors that threaten community safety.

⁴ A detailed description of the supervision services and examples are provided in Section 22 of the Appendix.

- 2) Monitoring - Indirect: Monitoring activities other than phone or personal contact with defendant. The focus is the same as that for direct monitoring but also includes administrative and clerical activities relating to the defendant's probation status.
- 3) Brokering: Coordinating, arranging, and/or referring defendant to community resources. The focus is on providing assistance with problems of employment, housing, finances, or other situational difficulties. Direct monitoring is assumed.
- 4) Counseling: Providing casework or direct personal counseling to defendant and/or his immediate family. The focus is on assisting the defendant with psychiatric, emotional, or behavioral problems.
- 5) Brokering/Counseling: Entries in which both activities are present. Direct monitoring is assumed.

WHAT HAPPENS TO DEFENDANTS IN FIELD SUPERVISION? WHAT DO THEY RECEIVE IN SUPERVISION AND HOW OFTEN?

We found that defendants received on the average 1.5 supervision contacts per month (Table 7). A contact was defined broadly in the evaluation to include not only direct interaction with the probationer, but also indirect involvement as defined by the indirect monitoring activities in Section 22 of the Appendix. The rate of 1.5 contacts per month is consistent with the average frequency of contacts reported in an OPE survey of 925 probationers polled in February, 1977.

We also found that 80 percent of the supervision contacts were solely monitoring; the remaining 20 percent provided brokering and counseling services in addition. Supervision deputies, however, reported by questionnaire that about 60 percent of their supervision activities were monitoring and about 23 percent counseling. They attributed a much larger percentage (17 percent) of their activities to brokering.

When each type of supervision activity is examined separately, *the number of contacts per month was found to be constant, regardless of the type of activity or the length of time on probation (Figures 3-7).* This finding was contrary to the expectation that more frequent supervision contacts occurred during specific periods of the probation term, especially early in probation supervision. It suggests a tendency for DPOs to even out *their workload*, perhaps in face of high caseloads and increasing administrative responsibilities.

CONCLUSION

We conclude that supervision services provided to adult probationers consist primarily of monitoring activities at an average rate of 1.5 contacts per month. The rate is highly constant, regardless of the type of activity provided or the length of time the defendant is on probation.

FACTORS WHICH INFLUENCE WHAT SERVICES ARE PROVIDED

Do Sex And Ethnicity Have An Effect On The Type Of Services Provided?

We found that sex and ethnicity have a significant effect on the type of services a defendant receives (Table 8). Female defendants were seen more often than male defendants for each type of supervision activity. This relationship holds true even when males and females are matched for defendant group classification and type of caseload. *Contrary to our expectation, social factors (principally employment status and stability) rather than conviction offense or prior record, had the strongest relationship to the provision of direct monitoring activities.* The more serious the defendant's score on social factors, the more direct monitoring he received. Clearly, if a defendant is not employed or attending school, he is more available for direct supervision and he receives mainly monitoring. Brokering and counseling services are not related to his greater availability.

This finding suggests that supervision deputies feel a greater need to carefully watch probationers when they are idle (unemployed and not attending) than when they have severe conviction offenses or severe prior criminal records.

Ethnic comparisons revealed that white defendants were seen significantly more often than blacks for specialized services (brokering and counseling). Black defendants, in contrast, tended to get more indirect monitoring. This relationship also held when defendants were matched for defendant classification score and type of caseload.

CONCLUSION

We conclude that sex of defendant has a very strong effect on the provision of supervision services. Females receive substantially more of all types of services than males.

We further conclude that ethnicity has the strongest influence on who receives brokering and counseling. Black defendants receive much less of these specialized services than do other ethnic groups. Further examination of these differences in the delivery of services is required.

Does Type Of Caseload Have An Effect On The Type Of Services Provided?

We found that the specialized caseloads and, in particular, the drug caseloads had a significantly higher mean score on defendant characteristics (Table 9); that is, more severe ratings for conviction offense, social factors, and prior record in comparison to general caseloads. This finding provides support for the contention that more difficult cases are channelled into specialized caseloads. Concomitantly, we found that the specialized caseloads do have a higher frequency of contacts in comparison to the much larger general caseloads (Table 8). However, when looking at the individual activities provided, we found that the greater frequency of contacts are due almost exclusively to direct monitoring. There was no appreciable difference in the mean number of brokering and counseling contacts between the more serious special caseload defendants and the general caseload defendants.

To determine if the frequency of brokering and counseling activities was related more to our classification of defendants by "difficulty" rather than type of caseload, services were examined for high, medium, and low group defendants across caseload types. *We found no differences between the defendant's group classification and the frequency of brokering and counseling contacts.* The tendency, although not significant, was for medium group defendants to get more brokering and counseling than either the high or low group defendants. *It suggests that these defendants are seen as more "workable" in comparison to high group defendants and perhaps more appropriate for counseling in comparison to low group defendants.*

We did find, however, a highly significant difference in the frequency of indirect monitoring among the three groups. *High group defendants received much more indirect monitoring than medium group defendants who receive much more than low group defendants.*

Direct monitoring contacts increased directly with defendant group ranking, but the differences were not statistically significant.

To further clarify the relationship of supervision services to type caseload, defendants were matched by their length of probation in addition to their group classification. *We found no difference in the frequency of indirect monitoring or brokering-counseling activities between general and specialized caseloads.*

As noted for the total group, the frequency of direct monitoring tends to be higher for specialized caseloads. However, when defendants of similar levels of "difficulty" and lengths of time on probation are compared between caseload types, the increase in direct monitoring does not reach statistical significance.

CONCLUSIONS

We conclude from these findings that the more serious defendants are, indeed, channelled into specialized caseloads and receive more supervision contacts than defendants supervised in general caseloads. The increase in contacts, however, are predominantly in monitoring activities.

We further conclude that provisions to "beef up" field supervision with specialized caseloads to allow much greater involvement with the defendant, either by emphasizing counseling or the brokering of services, are not accomplishing that end.

Part 3

THE OUTCOME OF PROBATION SUPERVISION

INTRODUCTION

The previous section described the process of supervision, the services provided, and the characteristics of the probationers themselves. This section looks at what might be termed the outcomes of the process. For the courts, the Board, and the Department, the important questions are:

- 1) Who completes probation, and who does not? How does this data compare with outcome statistics from similar jurisdictions?
- 2) What is the relationship between the outcomes we observe and the process we have outlined?
- 3) What is the relationship between the outcomes we observe and the criminal justice system in which Probation operates? How does Probation's environment influence the way in which the Department responds to the probationers it must supervise?

A FOCUS ON OUTCOME - WHAT DOES IT MEAN?

Descriptions of the outcomes of supervision in the literature on probation and parole show two basic orientations:

- 1) Client-based outcomes which attempt to examine changes in the lifestyle and outlook of probationers and to relate these changes to the probation process itself.
- 2) "Recidivism" outcomes which use violations of legal sanctions as the criterion for determining outcome and relating the presence or absence of violations to the probation process itself.

After an overview and extensive search of the literature, OPE decided that a description of outcomes based on violations of legal sanctions was most appropriate for this analysis. The appropriateness of this focus is underscored by the results of the survey of Alameda County citizens (discussed

in Chapter II: Management) and by concerns repeatedly raised by both the courts and the Probation Department. We further maintain that it is Probation's responsibility, as an arm of the criminal justice system, to emphasize compliance with the law versus the understandable concern for rehabilitation represented by any department or agency which delivers social services to clients.

DESCRIPTION OF OUTCOMES

The analysis identifies three types of outcome. Separating probation into these categories allows us to examine not only "events" (violations) but also the way the Probation Department and the courts respond to those events through dispositions. It is in terms of *response* that the areas of discretion and ambiguity in the process can be most readily seen. For example, in which areas do conflicting policies about filing dispositions affect the outcomes of supervision?

This analysis looks at outcomes that occur *within* the period of supervision rather than attempting to find out what happens after supervision ends.⁵ By adopting this focus, we expect to highlight questions of enforcement and discretion and their implications for future policy decisions.

We have defined the following categories of outcomes of supervision for our sample analysis:

- 1) Completion - This group of probationers in our sample complete their probations without *reported* violations of the law (new arrests) or of the conditions of probation imposed by the court (technical violations). *Over 40 percent of our complete sample of 330 probationers fall into this category.* Because

5. A full discussion of the rationale for this approach appears in Appendix Section 22.

the study is based on *reported violations*, it probably *understates real* violations substantially. This is a continual problem in evaluating law enforcement or corrections programs. (We will identify the incentives and disincentives for reporting violations under the section on "Enforcement of Conditions" below.)

- 2) Qualified Completion - This category includes probationers who completed probation, but for whom either new arrests were reported while under supervision or technical violations occurred which resulted in a petition to the court. *Almost one-fourth of our sample falls into this category.* We recorded only reports of technical violations which resulted in court petitions; therefore, we once again *understate* the number of violations of conditions of probation. We did not, for example, record all instances in which reporting cards showed failure to report, unless failure to report was the cause for a court petition. The number of persons in this category would probably increase if all failures to report had been included.
- 3) Non-completion - This category includes probationers whose probation was revoked for new offenses or for violation of probation conditions, or who absconded during the period of supervision. *Almost one-third of our sample falls into this category.*

The outcomes of field supervision are related to the interaction of three factors examined in the previous section. These are:

- 1) *The extent to which restrictions placed on the probationers by the court are enforced by various parts of the criminal justice system.* It is clear that there are substantial areas in which the discretion of various actors in the criminal justice system operates to affect the outcomes of supervision we observe. For example, even if the probation officer decides to report violations to the court by filing a petition, there is no assurance that the petition will be accepted. This creates *disincentives* for the probation officer to report violations to the court. Information from extensive interviews substantiates this.

Although the Department does not have statistics readily available to support this contention, Department personnel state that the number of petitions *denied* by the court is substantial. This creates *disincentives* for deputies to report many violations to the court. It is difficult to say, then, that probationers who completed probation without *reported* violations did not, in fact, commit violations. Other con-

siderations include the arresting policies of local police departments, DA charging policies, and incentives (or disincentives) for selective enforcement created by the Probation Department itself.

- 2) *The services provided by the Probation Department which are assumed to influence the behavior of the probationer.* We have discussed above what these services are, how they are delivered, and to whom.
- 3) *The characteristics of the probationer.* Probationer "motivation" has been repeatedly cited by Alameda County DPOs in our interviews and questionnaires and in the corrections literature as the *single most important variable in explaining the outcomes of supervision.*⁶ Clearly, "motivation" itself is virtually impossible to measure. The probationer classification score explained above summarized characteristics which are commonly believed to relate to motivation. Length of criminal involvement, employment, and family stability are examples.

How Many Probationers Complete Probation? How Many Do Not?

TABLE A

Completion, Non-Completion and Completion With Violations:
OPE Random Sample of 1973 Probation Grants

<u>OUTCOME</u>	<u>FREQUENCY</u>	<u>PERCENT</u>
Completion	141	42.7
Completion With Technical Violations	9	2.7
Completion With New Offense	58	17.6
Completion With Technical Violation Plus New Offense	11	3.3
Non-Completion	108	32.7
Others	3	.9
<u>TOTAL</u>	<u>330</u>	<u>100%</u>

⁶Subsidy: A Perspective. California Bureau of Criminal Statistics (n.d.)

Almost one-third of our sample did not complete probation. To appreciate the significance of this finding, it is useful to compare this proportion with data collected by LEAA for four county probation departments: Multnomah County (Portland), Oregon; King County (Seattle), Washington; Philadelphia County, Pennsylvania; and Maricopa County (Phoenix), Arizona. In State and County Probation: Systems in Crisis,⁷ proportions of probationers revoked range from a low of 14 percent in Philadelphia to a high of 27 percent in Maricopa County. Recent research by Martinson and Wilks, who surveyed literature from a large number of studies of probation and parole, states that, nationally recidivism of probationer's averages 21.3 percent.⁸ *Non-completion of probation in our sample was thus 11.4 percent higher than found in other jurisdictions.*

Our analysis indicates that over four Alameda County probationers in ten complete probation without reported violations of any kind. We were frequently told that a criterion for completion which allowed for no violations at all was unrealistic. This concern centers around the degree to which conditions of probation (particularly the exhortation to probationers to "obey all laws") are in fact enforceable. The 23.6 percent of our sample who completed probation *despite* rearrests and/or technical violations address this concern.

REARRESTS WHILE ON PROBATION

Of our sample of 330 probationers, 138 (or 42 percent) were rearrested while under supervision. About one-half of those rearrested remained on probation and went on to complete probation "successful" after a report of a new arrest.

⁷State and County Probation: Systems in Crisis. Law Enforcement Assistance Administration, May, 1976.

⁸Martinson, Robert and Judith Wilks. Knowledge in Criminal Justice Planning: A Preliminary Report. The Center for Knowledge in Criminal Justice Planning. New York, October 15, 1976. This study includes numerous definitions of recidivism and ways of measuring it.

Again, it is useful to compare this finding with data from the LEAA study cited above,⁹ bearing in mind that some differences are undoubtedly due to differences in arrest and prosecution policies among counties.

- In the four-county LEAA study, 57 percent of the probationers were rearrested while on probation.
- Of those rearrested, 40 percent remained on probation.

Alameda County probationers appear not as likely to be rearrested while on probation as probationers in the four-county study but are *more* likely to remain on probation if they *are* arrested.¹⁰ One possible explanation for this is that Alameda County probationers are being rearrested for less serious crimes than the offenses for which they were originally placed on probation. Some supervising deputies told us that a probationer rearrested for less serious crimes could be regarded as a "success" in some instances. To explore this possibility, OPE compared the overall severity of pre-grant and post-grant offenses. The results of that analysis (which appears in its entirety in Appendix Section 22) show that *there is no statistically significant difference between the mean severity score for pre-grant offenses and the mean severity score for post-grant offenses*. Thus, it is not clear that the character of the rearrest itself provides rationale for the reporting patterns we perceive.

The criminal justice system itself provides differential and often conflicting incentives for reporting rearrests. Two sources of conflict are court policies (or lack of policies) governing filing of revocations and reports, and ambivalence on the part of supervising deputies themselves.

⁹ LEAA op. cit.

¹⁰ In our sample from Alameda County, one half of rearrested probationers are terminated after a new arrest. In the LEAA study, 60 percent of those rearrested are terminated after a new arrest.

1) Court Policies

In our discussion of the supervision process, we outline the amount of discretion allowed the probation officer in filing petitions to the court. It is important to remember that the amount of DPO discretion in these matters depends on the limits set by the bench. These limits are frequently inconsistent. Although there is a policy set down by the Superior Court which requires petitions to be filed for any new arrest of an individual granted probation by the Superior Court, the requirements for reporting new arrests to the Municipal Courts vary with the individual judge. Even Superior Court policies vary with the individual who happens to be presiding judge at any given time. Thus, we would expect to see the number of persons *completing* probation with new arrests to fluctuate through time as court-ordered directives for revocation change.

2) DPO Discretion, Personal Preferences, and Professionalism

Within the areas of discretion remaining to them, DPOs differ individually over the extent to which "client-based" outcomes (stressing personal rehabilitation of the probationer) or "recidivism outcomes" (stressing obedience to the law) are preferred. For example, a DPO may, under some circumstances, choose *not* to file a petition on a probationer who is rearrested if he believes that his relationship to the probationer would be jeopardized by doing so. Since the Department itself provides little clear direction in these cases, the professional "self-image" of individual deputies strongly influences the extent to which rearrests are reported for court action.

CONCLUSIONS

We conclude that our results show a greater non-completion rate than that shown for four comparable counties and a higher incidence of recidivism than the average rate found in the national survey by Martinson and Wilkes. The group who complete probation despite violations present several problems in interpretation. The important question which must be resolved is "When is completion success and when is it failure?" This question is difficult to answer, given the lack of a continuous and consistent policy from the courts and the lack of consensus within the Probation Department itself as to whether a goal of community protection or a goal of rehabilitation is to prevail. The way in which this group is regarded has a dramatic effect upon the extent to which we can say "probationers succeed" or "probationers fail" in Alameda County.

The Alameda County citizens survey clearly points to a strong concern for protection of the community. An interpretation of "completion despite new violations" as "success" would lead us to argue that Alameda County has a "success rate" of approximately 66 percent. An interpretation of "success" as "completion without new violations" would show approximately 43 percent

of probationers succeeding. This ambiguity makes it impossible to draw clear conclusions about the worth of adult probation services. It can only be resolved if criteria for dealing with this "middle group" are clearly and unambiguously defined.

WHO COMPLETES PROBATION, AND WHO DOES NOT?: A BRIEF PROFILE¹¹

In order to clarify the differences in characteristics which distinguish probationers in each category of outcome, we provide below a brief profile of the types of probationers who are likely to fall within each category. In addition, we include in our profile two groups which we perceive to be of special concern to the county: probationers who are drug abusers and probationers convicted of alcohol-related driving offenses.

1) Completion of Probation Without Violations

Probationers who complete probation without violations are likely to be female or males with relatively short histories of involvement with the law. They are likely to have a job, if they are male, and are probably not involved with drugs.

Contrary to our expectations, persons in our sample who are on probation for drunk driving appear to have a *higher* rate of completion without violations than does the sample as a whole.

There are strong indications that the alcohol-related group displays few of the characteristics of the "habitual criminal." Our interviews and the literature on alcoholism suggest that they are far more likely to be stable, employed individuals when compared to most probationers. There may be strong incentives for them to "succeed" on probation *regardless* of the services offered. In fact, they do.

Over 53 percent complete their probation without violations. When completions with violations is included, the completion rate jumps to 75 percent.

¹¹ Complete tables for this profile appear in Appendix Section 22.

2) Completion of Probation With Violations

Probationers who complete their probation despite new offenses or technical violations are likely to be misdemeanor offenders whose probation was granted by a municipal court. This is, in part, because reports of all violations are not uniformly required by municipal courts. Few of these individuals are female. (Females are more likely either to complete without violations or be revoked.) This suggests either that females experience a feeling of "jeopardy" imposed by probation and thus do not reoffend or that the probability of revocation, *if a violation is committed*, may be higher for females. Drunk drivers are only slightly more likely to belong to this group than are drug users. Neither of these proportions differs substantially from the sample as a whole.

3) Non-completion of Probation

Probationers whose probation is revoked and who do *not* complete probation are likely to be "high risk" individuals with a history of serious criminal involvement. Individuals with drug problems are more likely *not* to complete probation than either the sample as a whole or persons with driving offenses. *Over half of the probationers in our sample who had drug-related conditions of probation did not complete probation.* This compares unfavorably to the total sample (about 33 percent non-completion) and to drunk drivers (about 25 percent non-completion).

CONCLUSIONS

We conclude that the success of probation supervision is strongly associated with the characteristics of offenders and the interpretation given to those who complete probation with new offenses or technical violations. The probation officer's discretion in reporting violations is the single most critical factor that determines success if violations occur.

THE SYSTEM RESPONSE TO EVENTS: ENFORCEMENT OF PROBATION CONDITIONS

Far fewer probationers who had petitions filed for technical violations complete probation (2.7 percent) than do probationers who have new reported arrests or arrests and technical violations (21.9 percent). From our staff

questionnaire, we learned that almost three out of four DPOs feel that the degree to which probation conditions are enforceable and the degree to which the probationer feels in jeopardy of going to jail or state prison most strongly affects the cooperation of probationers on supervision.

The five probation conditions that DPOs perceive to be easiest to enforce are, in order:¹²

- 1) Report to and follow the instructions of the probation officer.
- 2) Fines
- 3) Submit to nalline or urinalysis tests as directed by the probation officer.
- 4) Restitutions
- 5) Remain in a drug program until released by the program director and the DPO.

Least enforceable were:

- 1) Do not associate with any person using or in any way involved with narcotics or dangerous drugs.
- 2) Do not indulge in the (excessive) use of alcohol.
- 3) Maintain employment.

These perceptions were confirmed by responses we received in subsequent interviews with judges and attorneys. Judges further stated that reliance on "standard" conditions of probation, enforceable or otherwise, may often relieve the DPO of responsibility for suggesting creative alternatives. Clearly, *the*

¹²The full array of conditions with ratings of enforceability are listed in Section 4 of the Appendix.

more conditions are perceived as un-enforceable, the less the incentives for DPOs to try to enforce them or for probationers to comply with them.

We found in our sample that two conditions - "Report to and follow the instructions of the probation officer," and "Obey all laws; be of good conduct" - account for 65 percent of the total violations for which petitions were filed.¹³ It is clear that these two conditions encompass a broad range of activities. The "reporting" condition involves situations the DPO can observe firsthand. "Obey all laws" includes situations in which the probationer's activity can essentially be monitored for the DPO by other agencies (for example, the police). Thus, deputies' perception of "obey all laws" as unenforceable clearly means that it is unenforceable *by probation officers*. It is, however, *reasonably* enforceable by other law enforcement agencies.

We also found that although almost 60 percent of the probationers in our sample had been directed to seek employment or attend school as a condition of probation, violation of this condition was *never cited* as a basis for filing a revocation petition to the court. Given the high rate of unemployment in Alameda County, this suggests that for many conditions of probation, the environment may strongly influence the extent to which conditions are enforced or enforceable.

CONCLUSIONS

Probation conditions are ordered by the court for many different reasons. Data from several sources clearly argues that many conditions are not enforceable. It is our judgment that ordering conditions which are perceived by

¹³Frequency of violations reported for each condition appears in Appendix Section 22.

key officials as unenforceable make a mockery of the system in the eyes of probation officers, the Bench, and most importantly, defendants.

RECOMMENDATIONS

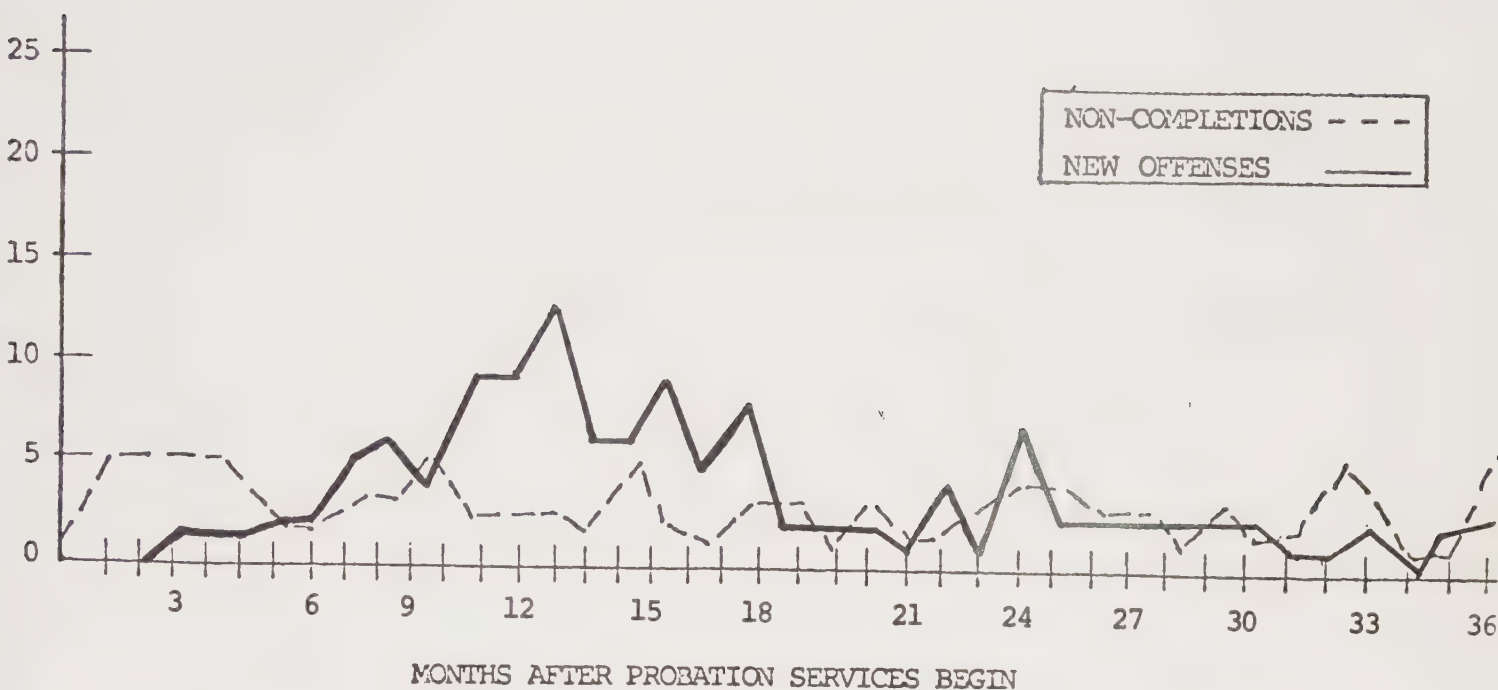
We recommend that there be only two standard conditions of probation: "Report to and follow the instructions of the probation officer" and "Obey all laws of the community." Any other conditions should be specifically tailored to the needs of the defendant and the concerns of the community.

TECHNICAL VIOLATIONS OR NEW OFFENSES: RATIONALE FOR NON-COMPLETION

Non-completion because of new arrests and non-completion because of technical violations appear to receive different emphasis and occur at different times during the period of supervision. To determine the system's response to violations, we looked at both new arrests and non-completions as defined by revocation dispositions.

We computed not only the frequency of new arrests and non-completions but also the probability of new arrests and non-completions during the first 36 months of supervision. Figure 1 shows that (1) the absolute frequency of new arrests peaks at about the twelfth month after supervision begins and declines thereafter; (2) the frequency of non-completions (the system's response) shows less variation, although there are slight increases in activity shortly after peaks in the frequency of new arrests. We can only assume that the lack of variation in non-completions (the system's response) reflects in part "workload evening" by DPOs in response to the increasing demands of administrative paperwork.

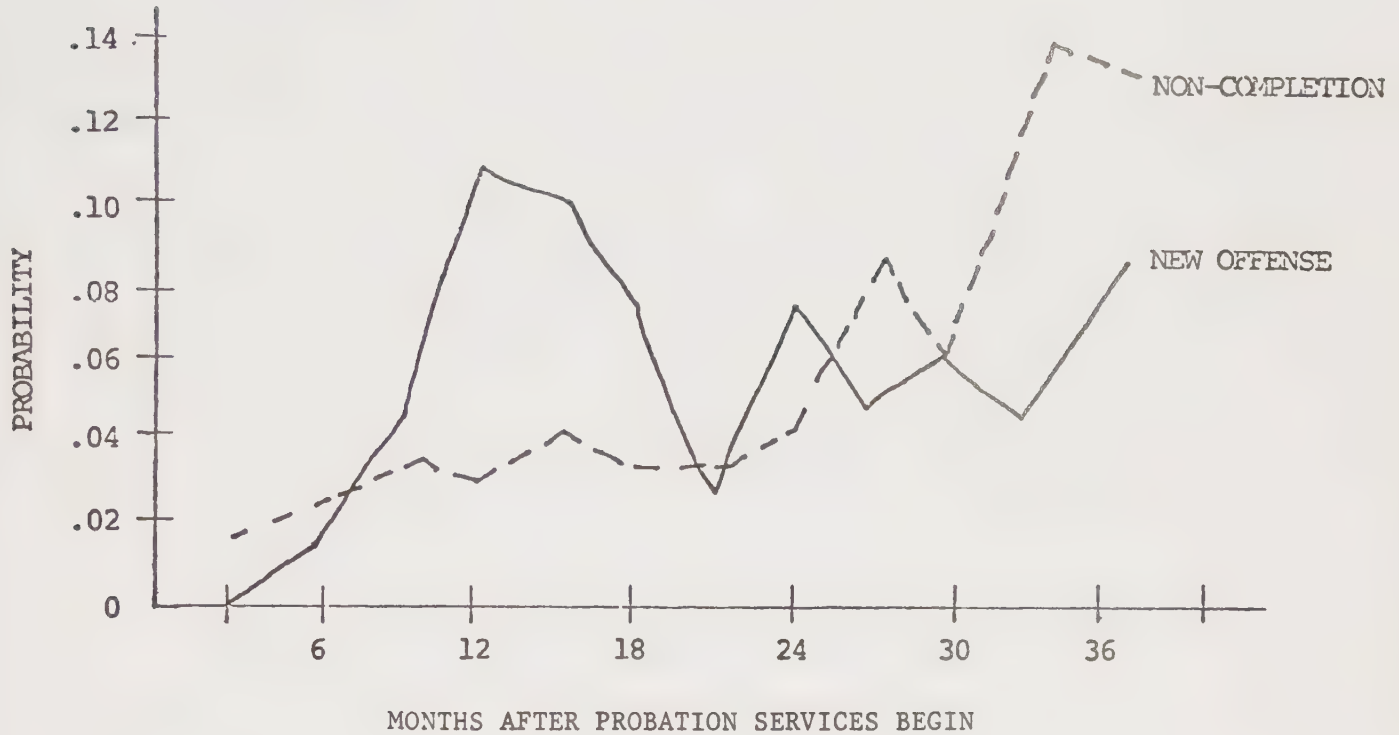
FIGURE 1

COMPARISON OF NON-COMPLETIONS AND NEW OFFENSES

We then graphed the *probability* of new arrests against the *probability* of non-completions (revocations) for the same period. We asked the question: *At what point in the period of probation is a probationer most likely to be rearrested, and at what point is he most likely to be revoked?* The results appear in Figure 2.

FIGURE 2

PROBABILITY OF NEW OFFENSES AND NON-COMPLETION OF
PROBATION BY MONTHS IN FIELD SUPERVISION



In the figure, a surprising pattern emerges: *The longer a probationer remains on probation, the less likely it is that he will be rearrested, but the greater the probability that his probation will be revoked.*

DISCUSSION

It is important to remember that new arrests and non-completions (revocations) may be independent of each other. Revocations occur either in response to new arrests or in response to technical violations, or both. The pattern we observe appears to reflect a change in priorities for enforcement as the length

of the supervision period increases. Our data shows a strong relationship between reporting of technical violations and new arrests and the length of time on probation. For our "completion with violation" group, increasing time on probation means *more* reporting of technical violations and *less* reporting of arrests.

There are a number of possible explanations for this pattern.

- 1) Revocation for new arrests occurs early in the period of supervision, partly because of Superior Court policies requiring revocation for new offenses and partly because probationers who commit new offenses may be seen by the probation officer as poor "prospects" for further supervision.
- 2) Petitions for revocation based on technical violations alone build a weaker case than petitions based on rearrests. Therefore, probation officers may "build a case" over time by "banking violations" until they feel that a petition for revocation will be accepted. There is some support for this view in the parole literature. A recent study by the California Department of Corrections finds that parole officers frequently use conditions to build a case for return to prison when individual conditions would not alone justify it.¹⁴
- 3) It is entirely possible that the longer a probationer remains on probation, the more reduced is his feeling of jeopardy. Thus, *the longer he remains on probation, the more likely he is to become lax in fulfilling conditions such as paying fines and restitutions or reporting to the probation officer.*
- 4) From our analysis of "social control" as defined by the type and number of conditions of probation imposed, we found that in fact "high risk" probationers got more conditions than "low risk" probationers. "High risk" probationers typically get longer probation grants. Thus, even if difficult probationers manage not to be rearrested, there is a higher probability that they will violate conditions *simply because they have more conditions to violate.*

¹⁴Star, Deborah and John E. Berecochea. Rationalizing the Conditions of Parole: Some Recommended Changes. California Department of Corrections Research Unit, March, 1976.

CONCLUSIONS

We conclude that actual enforcement of probation conditions appears to be done more by arresting agencies in the early stages of probation and by supervising deputies later in the probation period. Only one condition of probation, "Obey all laws," clearly is necessary to articulate the goal of protection of the community. It is more reasonable to expect that this condition will be enforced by agencies other than the Probation Department than to expect the supervising deputy to be primarily responsible for enforcement.

SERVICES, SETTING, AND OUTCOME

One major objective of the evaluation is to determine if there is a relationship between the specific supervision services provided, the setting in which they occur, and probation outcomes as defined by the degree to which defendants complete their probation term without incident. The Probation Department provides different types and intensities of services to different types of probationers. The issues we address in this section are:

- 1) Is there a relationship between the types of services provided and the outcomes of the supervision we observe?
- 2) Is there a relationship between assignment to general and special caseloads and the supervision outcomes we observe?

Settings - range from *general caseloads* in which DPOs supervise an average of 146 probationers (with a presumed focus on monitoring and surveillance) to *special and subsidy caseloads* (with a presumed focus on intensive supervision). For this analysis, we combine special and subsidy caseloads into a single category.

Services - range from *indirect monitoring* (in which no face to face contact between DPO and probationer is involved) through extensive *counseling*, brokering, and casework (which involve substantially more interaction between the probationer and the DPO). In the analysis which follows, specialized services will be called "counseling." This category includes any brokering activity that may occur. We collapsed special services into one category - counseling - because of the small amount of brokering activity represented in our sample.

DESCRIPTIVE FINDINGS ON SERVICES: A SYNOPSIS

It is useful to summarize briefly some findings about the provision of services from previous sections of this report. We looked at three types of service: *direct monitoring*, *indirect monitoring*, and *counseling* (including *brokering*). We found that:

- *Different types of probationers receive different amounts of indirect monitoring.* Probationers classified as high "risk" or "difficult" get the most; medium risk probationers get some; and low risk probationers get the least. There is no significant difference between general and special caseloads.
- *Different types of caseloads involve different amounts of direct monitoring.* Probationers on special caseloads get more direct monitoring than those on general caseloads. There is no discernable differences among types of probationers (high, medium, or low classifications) within the same type of caseload.
- *Although medium and low risk probationers get marginally more counseling services than do high risk individuals, the primary determinants of who gets counseling are sex and ethnicity.* Females and whites get more of this service than males or blacks.

RELATING PEOPLE TO SERVICES: RATIONALES FOR SELECTION

We identified a number of factors from the data and from our interviews and observations that help explain why these patterns of service delivery appear. For each type of service they are:

Indirect Monitoring - High risk individuals get the highest frequency of indirect monitoring activity because: They are more likely to violate the law or conditions of their probation. Therefore, they require more DPO time in terms of "paperwork." They require more surveillance, partly because they typically have more conditions of probation with which to comply. This increases the frequency of indirect monitoring we observe for this group.

Direct Monitoring - Special caseloads get more direct monitoring (primarily office visits) mainly because of the smaller size of these caseloads and the identification of these probationers as more serious offenders. This allows the DPO more time for this activity. The most important rationale for special caseloads is the extent to which they contribute to DPOs' opportunity to give special attention to clients (whether for monitoring or counseling). The rationale for assignment to such caseloads is the presumption that the client needs these services. In a sense, then, special caseloads can stand as a proxy for the type of offender.¹⁵ Our data suggests, however, that use of special caseloads *do not* necessarily imply an emphasis on counseling or brokering, although there is wide belief that smaller caseloads encourage use of these services.

Counseling - Personal characteristics dominate in determining who gets counseling primarily because DPOs choose to counsel probationers they consider "workable." Sex and ethnicity both have a strong relationship to the amount of counseling, but "risk" does not. Females and/or whites are more likely to be given counseling than are males or non-whites. The lack of relationship to "risk" as we have defined it is understandable since neither sex nor ethnicity are included among the variables used in our classification system. These variables emphasize criminal involvement; paradoxically, this suggests that subjective factors *not* based on criminal history influence the delivery of services while, obviously, criminal involvement determines a defendant's assignment to probation.

The assumption that personal characteristics are important is supported by our personal observations of the supervision process in March, 1977 and April, 1977.

¹⁵ It is notable that, while special caseloads in our analysis contain a high proportion of high risk individuals, they also contain substantial numbers of low and medium risk persons. This is in part an artifact of our decision to combine special and subsidy caseloads. Individuals may be assigned to special caseloads (e.g. alcohol) because of special needs and to subsidy caseloads because of severity of criminal involvement. Persons with special needs who are *not* drug users comprise the bulk of the low and medium risk probationers in our special group. Persons with severe criminal involvement and/or drug involvement comprise the bulk of the high risk group.

FINDINGS

a) The Amount of Service and Outcome: Does "More" Mean "Success?"

We find no statistically significant relationship between the amount of any kind of service provided and outcome. *The factor which most consistently explains the amount of service a probationer gets is the type of person he or she is.* Since we found no clear relationship between amount of service and outcome, we can only assume that the outcome of probation is related to factors other than the sheer number of contacts of any service that a probationer receives.

b) Service Emphasis and Outcomes: Does a "Focus" Mean "Success?"

After looking at services in isolation, we asked the question: *If probationers receive an emphasis on a particular kind of service, is there a relationship between service emphasis and outcome?* Emphasis was defined as five contacts of a specific kind of service per every six-month period for the first 12 months of probation.

From our observations, interviews, and questionnaires, we found that DPOs "earmark" certain probationers for certain kinds of services. There are strong professional and personal incentives for DPOs to select clients who appear reasonably likely to succeed or to benefit from a certain type of supervision. It seems unreasonable to expect deputies to barrage all clients with services regardless of motivation or potential for success. The Department provides little consistent direction in this matter.

Responses from our staff questionnaire illustrate DPOs perceptions about where the potential "payoffs" of supervision lie.

- 32 percent of supervision deputies feel that they have the greatest influence on first-time, or "non-serious," offenders.
- Another 38 percent feel that they have little influence in most cases and *particularly* over repeat offenders of those with a history of serious crimes.

In Table 2, we see that there is a fairly strong relationship between treatment emphasis and outcome. Two important points can be made:

TABLE 2

DOES "FOCUS" MEAN "SUCCESS?"

<u>OUTCOME</u>	<u>TREATMENT EMPHASIS</u>		
	MIXED SERVICES	PRIMARILY DIRECT MONITORING	PRIMARILY COUNSELING
COMPLETION	89* 44.5%	35 45.4%	17 32.1%
COMPLETION WITH TECHNICAL VIOLATIONS	6 3.0%	1 1.3%	2 3.8%
COMPLETION WITH NEW OFFENSE	30 15.0%	13 16.9%	15 28.3%
COMPLETION WITH TECHNICAL VIOLATIONS + NEW OFFENSE	5 2.5%	6 7.8%	- -
NON-COMPLETION	67 33.5%	22 28.6%	19 35.8%
OTHERS	3 1.5%	- -	- -
TOTAL	200 100.0%	77 100.0%	53 100.0%

The Chi square test ($\chi^2 = .0967$) suggests that there is a fairly strong relationship between treatment emphasis and outcomes ($p. = .10$). $N = 330$

- 1) If we compare a focus of direct monitoring with a focus of counseling and a mix of the two, we see in Table 2 above that persons receiving primarily counseling completed probation less frequently (32 percent) than those receiving direct monitoring (45 percent) or a mix of services (45 percent).

* The number above percent are the number of cases (N) for this occurrence.

- 2) Surprisingly, persons selected for counseling are more likely to complete probation after rearrest than the sample as a whole. If we look at all defendants who completed probation with a counseling emphasis regardless of whether they had violations, we see virtually no difference between this group and the total sample. What is important is that the mix of outcomes, related to the middle group, changes as service emphasis changes.

CONCLUSIONS

We conclude that probationers who complete their probation despite violations clearly represent the area in which DPO discretion operates most heavily. This is due to the lack of any clear policy on whether probation supervision is supposed to emphasize community protection or rehabilitation. We suggest that a substantial amount of the differences in outcome we observe may be due to differences in the way DPOs choose to define success or failure on probation.

We further conclude that direct monitoring shows the strongest positive relationship overall to completion of probation. The data also suggests that technical violations may be more conscientiously reported if direct monitoring is emphasized. Research on special and intensive supervision supports this hypothesis.

We further conclude that the probation services provided may more closely reflect the preferences of the DPO and the characteristics of the probationer rather than clear policies or priorities of the Probation Department. Service emphasis becomes a rough proxy for the relationship of the DPO to the probationer. This relationship has a strong effect on who completes probation and how they complete. This is particularly evident in areas where the court sets no clear criteria for revocation (for example, Municipal Court cases where there is no consistent requirement that new arrests be reported to the bench). We conclude that this area of ambiguity cannot be resolved without clear criteria set down by the bench and the Probation Department and that it allows and encourages differential enforcement of legal sanctions and probation conditions by the DPO.

SELECTION OR TREATMENT?

Our data indicates only a slight relationship between outcomes and type or intensity of service. There is strong evidence - from many perceptions of the criminal justice system, our analysis and the literature - that the *person* is what counts. Thus, the question becomes: *Are outcomes related to the characteristics of the probationer or to the services provided?* This study does not entail a research design which enables us to answer this question on the basis of study data alone. Rather, we rely on support from other parts of the evaluation and the research literature to help in explaining our observations and study of probation outcomes.

It is important to be reasonably sure that we do not confuse outcomes that are related to the presence or absence of a particular service with outcomes that are primarily related to personal characteristics of the probationer (his "motivation"). Therefore, we statistically "matched" probationers both by classification score and caseload since we have argued that, to an extent, caseload type is a proxy for personal defendant characteristics.

For the same type of probationer in the same type of caseload, we found that the relationship between outcome and type of service is weak, but that the relationship between outcome and probationer classification is strong. Simply, high risk probationers are likely to fail while low and medium risk probationers are likely to complete probation regardless of the type of service provided.

INTENSIVE SUPERVISION AND OUTCOME

Our data shows that special caseloads do involve increased direct monitoring in addition to containing a distinctive "mix" of individuals. We might, then,

interpret special caseloads as a proxy for intensive monitoring instead of for probationers with special needs. If we look at probationers in the same risk category (high/medium/low) but in different types of caseloads (regular monitoring versus intensive monitoring), we find that there is a strong relationship between the type of caseload and the outcome of supervision. Non-completion is more likely for the special supervision group (32.8 percent) than for those on general caseloads (24.8 percent) but about the same as for the total sample. Within the specialized groups, the completion rate is not significantly better or worse than that for the total sample.¹⁶ On the basis of interviews and corrections literature, we can suggest reasons why this must be so. For example, special caseloads contain a relatively high percentage of high risk probationers and a relatively high proportion of drug and alcohol users. High risk probationers are more likely *not* to complete probation for a number of reasons - they are more likely to be Superior Court cases, so that any new law violation is grounds for revocation; they have demonstrated a history of serious crime, which is commonly acknowledged to predict probable future violations; persons who are known to the police are more likely to be watched closely by them. Literature on probation subsidy outcomes points out that one result of increased surveillance is an increased probability that new violations will be detected, so that the probability of failure increases.¹⁷

In any event it appears that, again, *probationer characteristics and circumstances beyond the DPO's control account for a good deal of the propensity*

¹⁶ Similar results are reported in: An Evaluation of Seven Selected Probation Subsidy Programs, California Youth Authority, January, 1977, p. 2, 42.

¹⁷ Neithercutt, M. G. and Don M. Gottfredson. Caseload Size Variation and Difference in Probation/Parole Performance.

to fail. When we control for the characteristics of the probationer, we find a strong statistical relationship between the type of probationer within a given type of caseload and completion or non-completion. Essentially, *less difficult probationers are likely to complete probation and more difficult probationers are not, regardless of their placement on special or general caseloads.*

CONCLUSIONS

We conclude that no clear evidence exists which supports a rationale for the differential services delivered by the Probation Department.

Assignment to special attention caseloads reflects a perception by the Department that intensive supervision is appropriate for some individuals and not for others. However, current yardsticks make delivery of intensive services difficult unless a probationer is placed on a special intensive supervision caseload. Thus, given time and resource constraints, there is a strong incentive for services to be differentially delivered, and there is no Departmental policy which clarifies situations in which particular types of service should be delivered.

What is more important, however, is our conclusion that high risk probationers are likely to fail regardless of the type of services provided and lower risk probationers will probably succeed regardless of services provided.

Our data are in agreement with the conclusion most consistently drawn from corrections research: Overall, offenders probably succeed or fail more on the basis of personal characteristics than because of intervention by probation supervision. This is not to say that intervention is never successful in providing initial incentives or opportunities for some probationers to succeed. However, our data, observations, and interviews strongly suggest that it is, in fact, far more likely that selection is the important factor, rather than treatment. Probation officers will frequently select and provide services to those probationers who they feel will "succeed."

We see no utility in recommending that this practice be discouraged per se. However, it is surely pointless to barrage hardened offenders with services other than monitoring (to the extent it is possible) if the probability of changing behavior is low. It is equally pointless to provide services for offenders who, in reality, will probably not commit any more offenses.

We conclude that, in the absence of a consistent system for initially classifying defendants, and in the absence of clear policies to guide the delivery of services, adult supervision is largely undirected and discretionary. It is small wonder that judges have conflicting perceptions of what adult supervision actually entails.

We conclude that the discretionary nature of supervision includes the potential for selective enforcement - both of conditions of probation and new violations of the law. Although some latitude is no doubt warranted in certain cases, the limits of discretion (when, why, and for whom) are not defined in any meaningful way. Thus, we cannot say that adult supervision as it is presently structured meets either the goal of public protection or the goal of rehabilitation. We again stress that there is little opportunity for improvement in this situation until the courts, the Board of Supervisors, probation management and staff unambiguously define priorities and the expectations for adult supervision.

The recommendations that follow from our findings and conclusions are outlined in

CHAPTER I: WHAT IT ALL MEANS: ASSESSMENT AND PROPOSALS.

V. PRELIMINARY REACTIONS TO DRAFT REPORT

OPE customarily invites reactions to the preliminary draft of its evaluations from the department involved and the Ad Hoc Advisory Committee prior to preparation of the final report and presentation to the Board of Supervisors. This procedure was used in the Probation evaluation. All parties were requested to provide general reactions and to point out places where they felt errors existed. Upon examination of these comments, actual errors were corrected. The written comments are placed here for inspection.

The Probation Department provided for staff review of the draft, as requested by OPE. OPE provided copies for review. Unfortunately, time constraints did not permit our receipt of staff comments prior to preparation of the final report. The only available response by the Department to the draft is included here. Although much verbal feedback was presented - particularly by judges - few comments were placed in writing for inclusion with the final report.

NOTE: Discussion in the attached comments regarding pre-plea reports was useful in our revisions of the draft. OPE's final position reflects the concerns raised by the key parties.

The attached letters are the sole written comments received in time to be included with the final report.



OFFICE OF
PROGRAM EVALUATION

DATE: May 9, 1977

TO: Ad Hoc Advisory Committee - Probation Evaluation

FROM: Matthew J. Golden, Director, Office of Program Evaluation *MJG/m*

SUBJECT: FINAL DRAFT - PROBATION EVALUATION REPORT

Attached you will find the draft of the Evaluation of Probation Services. At our last meeting, we discussed briefly the procedure for your review, comments, and advice. This letter pins down how we would like your responses to come back to us.

We encourage you to make comments in writing since we will attach your written comments to the final report when it goes to the Board of Supervisors on June 7, 1977.

We need to receive your comments by May 20, 1977, at 5 p.m. However, if you can provide them to us on May 18, 1977 (the day of our Ad Hoc Advisory Committee Meeting), so much the better.

On May 18, we will receive and discuss your reactions to the report. The meeting on May 18, will be held from 12:15 to 2:30 p.m. in the County Administrator's Office (CAO) Conference Room, No. 566, located on the fifth floor of the County Administration Building, 1221 Oak Street, Oakland, California 94612.

We would like your written responses to arrive in the following manner:

In any study involving so many tasks and so many issues, it is inevitable that we will make mistakes. Recognizing this, we would like to receive from you as a separate document those points in the report that you perceive to be:

- Errors of fact, such as:
 - arithmetic or statistics,
 - interpretation of a document, or
 - any other point in the report that is clearly not a value judgment but is verifiable.

May 9, 1977

If you have what you perceive as correct information, please provide it. We intend to take all points that are considered errors of fact and research them. If we determine that they are errors, we will immediately make the appropriate corrections. The final report will include all of these corrections.

REMINDER: Please try to separate, if possible, those things you consider errors of fact and difference in interpretation.

GENERAL REACTIONS, REACTIONS TO SPECIFIC ISSUES, CONCLUSIONS,
RECOMMENDATIONS, OR PROPOSALS

The following two areas of responses will be provided directly to the Board of Supervisors, CAO, judges, and other interested parties, along with the final report. We will not condense them or manipulate them in any way; they will go directly as you provide them to us. These areas are:

1) General reaction to the draft report

In this section, we would like you to make your general comments to the report - positive, negative, or ambivalent feelings.

We would like this to be your opportunity to provide the Board with an understanding of your general position.

2) Reactions to specific conclusions, recommendations, and proposals

In this section, we would like you to react to the specific conclusions, recommendations, and proposals made in the report.

Again, we think that this procedure clarifies to all interested parties the area of major agreements and disagreements. This will make discussions that follow out of the evaluation more informed and of greater value to all parties, especially to the Board of Supervisors, the CAO, the Courts, and the Department.

Please remember that this draft should not be circulated beyond those designated for review and document.

Thank you again for your cooperation.

MJG:RPH:oue

Attachment

Attention: Please note that page IV-40 of the draft report was misplaced and printed on the last page of the report (in back of IV-48).



Probation Department

of Alameda County

400 Broadway, Oakland, 94607

Area Code 415
874- 6465

INTER-DEPARTMENT COMMUNICATION

TO: Matthew J. Golden, Director, Office of Program Evaluation

FROM: James D. Callahan, Chief Probation Officer

DATE: May 20, 1977

RE: Draft Report of "Evaluation of Probation Services in Alameda County"

The Department received the draft of the evaluation report on May 9, 1977, and was requested to provide its response by May 20th. The report represents eight months of intensive work within the Probation Department by your study team. We appreciate the fact that communications between your team members and Probation staff were well handled and that necessary procedures for the administration of questionnaires and individual and group staff meetings were well planned in advance. Considering the magnitude of your task and the fact that hundreds of hours were invested by all involved, disruption of the Department's normal work was kept to the lowest level possible.

Prior to receiving the report the Department was concerned that eight or nine days rather than the 30-day period originally requested was insufficient to react in depth or with any certainty to the evaluation. Since receiving the document our concerns were confirmed. It represents some 32 to 36 man months on the part of your team members. It covers both the management function of the Department and the investigation and supervision activities of the Adult Division. In an attempt to get management and line staff's responses to the report the draft of your study has been widely circulated throughout the Department in an attempt to solicit input and reaction. Over 300 written replies have been submitted with more yet to come. We have had no opportunity to categorize, summarize or analyze this staff input.

Additionally, although we met frequently with members of the study team to assess progress and in the latter stages did receive feedback and were allowed to comment on minor preliminary findings, we were completely surprised by a major recommendation starting on page I-16. The recommendation regarding small community resource management teams would have a significant impact on the organization and work of this Department. We will have to study this concept in far more detail, gathering information not available in the report, in concert with other components of the criminal justice system. Also, we will compare it with our various pilot projects currently in progress with some municipal courts in the county.

Matthew J. Golden
May 20, 1977
Page Two

In spite of the above enumerated obstacles the Department does have some very general reactions to the evaluation as follows:

1. The report has data that should be of value and a number of specific recommendations appear to have some merit. Needless to say, in the ensuing months the Department will cooperate with the County Administrator's Office and the Office of Program Evaluation in a full evaluation of the report's implications and recommendations.
2. The primary recommendation that "the Board of Supervisors in concert with representatives of the Superior and Municipal Courts determine what the primary business of the Probation Department should be" is a basic one. This will require considerable thought and discussion by the Courts and the Board of Supervisors with the Department.
3. The recommendation for a required "pre plea" report appears to be unworkable and impractical.
4. The configurations on Pages I-28 through I-39 are difficult to analyze. In an attempt to comprehend them better we have requested and received what raw data you have available on your budget computations. The raw data provided still does not clarify our questions and therefore it is requested that you formalize any additional notes, "rough" data and all computations that were used to justify the conclusions reached. These formalized notes should be made available to any recipient of the report for further study.
5. While some of the recommendations and findings appear to be simplistic solutions to involved and complex management and program problems common to large governmental organizations, we are confident that the follow-up discussions will give more specific direction as to how the evaluation team envisions these recommendations being implemented by the Department.

We shall continue to study your report and will be interested in modifications made, if any, in the final report to the Board of Supervisors. You may be assured of our continuing interest and cooperation.

JDC:pmg



JAMES D. CALLAHAN
CHIEF PROBATION OFFICER



OFFICE OF THE DISTRICT ATTORNEY

ALAMEDA COUNTY
COURT HOUSE
OAKLAND, CALIFORNIA 94612
(415) 874-8565

D. LOWELL JENSEN - DISTRICT ATTORNEY

20 May 1977

Mr. Matthew J. Golden
Director
Office of Program Evaluation
1221 Oak Street, Room 458
Oakland, CA 94612

Dear Mr. Golden:

We appreciate the opportunity to comment on the draft of the Probation Evaluation Report prepared by the Office of Program Evaluation. These comments will be limited to general observations of the draft and its proposals. Observations as to our perception of errors of fact in the draft have been and will be conveyed by our advisory representative on the ad hoc committee. This general comment is also limited in that we cannot respond to the complete scope of the draft in the time you suggest. Our basic comment will be directed to the specific proposal of the pre-plea report, in that this is an area in which we are directly involved and concerned, and provides an appropriate subject matter for a general reaction.

Pre-Plea Report

The District Attorney completely disagrees with the OPE recommendation that pre-plea reports should be prepared in all felony and some misdemeanor cases.

We do not agree with the assertion that present dispositions by plea are "often uninformed dispositions" or that there is any significant "void of important information" in the present process. OPE cites no data to support this assertion. It is simply rendered as someone's perception, and it is our perception that the assertion is not true. Moreover, there is no recitation of what specific information is now lacking, or if specific information could be provided by a pre-plea report to what purpose for the Court. That plea agreements are not now negated supports the conclusion that there is no reason to do so, including any supposed failure of sufficient information, rather than any other conclusion. Additionally, we do not agree that the pre-plea report is an appropriate or useful vehicle in the routine flow of criminal justice information. Present law permits pre-plea reports, but

they are not used because they are not a useful device. Mandating the production of a report which is not useful will not change the intrinsic utility of the report.

Here are some general observations about the adequacy of the OPE report with regard to the pre-plea process:

1. The Judicial Council has adopted sentencing Rules as mandated by S.B. 42 as of May 13, 1977. These Rules and a new Standard of Judicial Administration (Section 12.5) include criteria for sentence choice, sentence hearings, and the contents of pre-sentence investigation reports. The OPE report does not consider these Rules through no lack of diligence on the part of OPE inasmuch as the Rules did not exist when the OPE report was prepared. This is not an unusual time bind in the present frenetic world of criminal justice, but the unfortunate reality is that the OPE report must be completely reviewed and rewritten in the light of these new Rules. Any use of the present OPE report for major Probation Department policy overview without reference to the Judicial Council actions is simply irresponsible and futile.

2. The OPE report fails to recognize that the pre-plea report is also a pre-trial report. There is no analysis of the pre-trial impact of such a report. It may well be that most cases are resolved by plea, but many are not, and those which are not tend to be the more difficult, controversial and important cases. The pre-plea report is to be filed with the Court and as such will be a public document, open to public perusal and to that pre-trial media coverage deemed newsworthy. This impact is not addressed. Additionally, the report will be distributed to all parties, thus transmitting information between the prosecution and defense. This two-way pre-trial "discovery" impact is not addressed.

3. The financial or "cost-benefit" analysis offered by the OPE report is in a kind of criminal justice system vacuum. It is a "Probation Report" when filed but it impacts a great deal more than Probation alone. The pre-plea process described requires activities and input from law enforcement, the District Attorney, the Courts, victims and witnesses, defendants, the Public Defender, and Court-appointed and private counsel. The fiscal impact to the County and to other agencies as well as the whole range of non-fiscal impacts are, again, not addressed.

Here are some observations about specific parts of the proposed pre-plea report process:

- . There is to be a "Mandatory initial interview with defendant within seven calendar days from . . . court referral . . ." The defendant is under no legal duty to talk to the probation officer or anyone else. The

Court has no power to require this interview or to issue a Bench Warrant to require the physical presence of the defendant as is suggested by OPE. The Court can require the presence of the defendant in Court for Court process; but that, unless and until a conviction is obtained, is all.

- . At arraignment the defendant is to ". . . sign forms for release of confidential information . . .," and respond to a ". . . brief questionnaire of pertinent information" This information, otherwise legally unavailable to the prosecutor, is to be included in the report which is filed in Court and made available to the District Attorney. We will be rather surprised if any defense counsel knowingly permits his client to participate in this process. To the contrary, defense counsel, particularly with reference to "confidential" information, are expected to and in fact do use every legal means to prevent the pre-trial flow of any information to the prosecutor.
- . The District Attorney will prepare a report of ". . . all their pertinent information . . ." for ". . . timely submission . . ." to the Probation Department. From the time track which anticipates filing the pre-plea report with the Court in 17-22 days we expect that the District Attorney will not be "timely" at 7-10 days although the flow chart does not so specify. In any event this time track is not at all "timely" for us. The time available to our trial staff for pre-trial case preparation and case processing is not at all sufficient now, let alone when diminished by the time necessary for preparation of a comprehensive report for the Probation Department. Moreover, for all the reasons cited in this comment on pre-plea reports, we are not persuaded of their value to the system as a whole, and see no value whatever to the prosecution. In the absence of sufficient legal and clerical staff and a showing of sufficient value to the prosecutor or the system it would be our present intention not to prepare such reports.
- . Following conviction the District Attorney ". . . should have no new information to add to the supplemental report . . ." Even were we to assume preparation of a pre-plea report, there will always be significant time and effort needed for the final sentence report. Obviously the final report must be based on a review and update of the pre-plea report. As OPE recognizes the S.B. 42 sentence hearing will use the probation report in new and significant ways. We cannot prepare an adequate report for such a sentence hearing shortly after the defendant is arraigned and before any process activity at the Superior Court has even occurred. In this regard some of the aggravating criteria for the sentence hearing cannot be known at pre-plea time. For example, Rule

421(a)(6) of the Judicial Council Sentencing Rules cites this aggravating circumstance: "The defendant threatened witnesses, unlawfully prevented or dissuaded witnesses from testifying, suborned perjury, or in any other way illegally interfered with the judicial process."

The central point to this comment is that the OPE implication that the "supplemental report" would not be as extensive an investment in time and effort as the present post-conviction probation report because of the pre-plea time and effort is not true. The pre-plea report would be substantially new and an additional workload rather than a simple displacement in time of work already performed.

. The contemplated pre-plea discussion of ". . . those cases where probation is seen as appropriate . . ." will be inherently inadequate. Sentencing Rule 414 breaks "criteria affecting probation" into these basic categories:

- a) provisions authorizing, limiting, or prohibiting probation,
- b) danger of the defendant to others,
- c) facts of the crime,
- d) facts relating to the defendant.

As to (a), it is not possible at pre-plea to know whether or not the defendant must go to state prison because the criteria for this state of legal affairs requires that the mandatory criteria be pleaded and proved. Until conviction or plea we do not know if the defendant is eligible or not. We can speculate from the pleadings, but the scope of that speculation seems to be a significant waste of time until we know in fact whether the defendant is eligible for probation.

As to (c), the facts of the crime include such fundamental context items as whether the defendant was armed or used a weapon, inflicted bodily injury, and other parallel facts which, again, are yet to be determined. Will the probation officer make a pre-trial assessment of the probable result? How useful is the speculation of the sentence choice of prison or probation otherwise?

As to (d), the criteria includes: "(9) whether the defendant is remorseful" and "(10) whether a financially able defendant refuses to make restitution to the victim." Both require, if any significance is to be attached, some kind of statement by the defendant. Since that statement implies guilt, it is unlikely that it will be made available pre-trial.

Another of the facts of the crime criteria has to do with whether or not the crime "demonstrated criminal sophistication or professionalism"

by the defendant. Suppose we consider this criteria and that related to danger. Obviously the Court should know if the probation officer considers the defendant a professional criminal dangerous to others who should be imprisoned. If this assessment is part of a pre-plea report filed as a public document with the Court by a court officer pre-trial, we must be concerned with the potential impact in the area of fair trial--free press. The Courts are, to us unduly, sensitive to this problem and the potentiality of a change of venue is created. The dilemma is that inclusion of this information pre-trial can impact fair trial--free press, and exclusion of the information renders the report misleading and sterile.

- . Inclusion of adequate "arguments of mitigation and aggravation" is contemplated but unlikely. Sentencing Rule 423 criteria, for "circumstances in mitigation" include duress, great provocation, and diminished capacity among others. All these concepts are trial defenses to one extent or another. Again, the defendant will not provide information of this nature pre-trial.
- . Probation officers will "actively investigate all aspects of the case (i.e., speaking with witnesses and victims . . .)" The investigation results will be part of the pre-plea report and thus available to the parties as well as the Court. "Speaking" to the witness and victim will obviously be about the crime, and the result will be a new pre-trial "deposition" for the defense. The probation officer becomes a potential source for impeachment of the prosecution witness, a potentiality of a good deal more trouble than it is worth as far as we are concerned. Like defendants, victims and witnesses are under no legal compulsion to talk to the probation officer. When the total pre-plea report system suggested by OPE is considered, we could be inclined to advise victims and witnesses not to talk to the probation investigator until guilt or innocence has been resolved in the case.

The sum of these observations is that we believe that the OPE report does not present adequate data or logic to support a system-wide policy commitment or participation by this office or any other criminal justice agency in a pre-plea report procedure. The failure we perceive is not simply a product of the adequacy of the report, but is inherent in any system of pre-plea reports, the cost benefit analysis will always come out with substantial cost for little or no value.

Summary

We will have to delay an extended comment on the analysis and proposals by OPE in the area of Adult Supervision. We have not had sufficient time

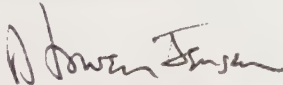
Mr. Matthew J. Golden
Page 6
20 May 1977

to do our own analysis and prepare a response to the OPE report. Our quick reaction is to agree intuitively with the assertion that "there appears to be no significant relationship between the amount of any probation service provided and the outcomes" but to disagree with the conclusions and proposals that flow from that assertion as more timid and cosmetic than the analysis would appropriately require. In any event, we intend to prepare a thorough response for future submission.

We are in a similar position on the "Management" portion of the draft. We would expect the Court to respond rather vigorously to one suggestion in this section, to the effect that the Probation Department might be operated as an agency "completely independent of the judiciary," in that this assertion appears to be a misapprehension of the legal and pragmatic status of probation services. We would essentially agree with the conclusion that a new level of dialogue between the Court, from a functional perspective and the Board from a fiscal perspective is valid, and we would hope to contribute to that dialogue.

Overall we perceive the report to be weak in system analysis and system impact but of sufficient scope and provocative dimension to help move the definition and delivery of probation services forward. Be assured of our continued cooperation. Thank you for this opportunity to review the draft report.

Very truly yours,



D. LOWELL JENSEN
District Attorney

DLJ:b

DEPARTMENT OF YOUTH AUTHORITY

JOB Program
1111 Jackson St., Rm. 1015
Oakland, Ca. 94607



May 19, 1977

Mr. Matthew Golden, Director
Office of Program Evaluation

Dear Mr. Golden:

Subject: Evaluation of Probation Services in
Alameda County—Draft

This an impressive study of adult probation, whose conclusions and recommendations can not be ignored. The validity of the findings are ensured by the mutiple sources, including questionnaire surveys of both DPO's and probationers, interviews, review of case files, and direct observation. In general the conclusions are adequately supported by the data and the recommendations appropriate to the problems addressed. On the basis of the study findings, current research in corrections, and my own background of experience I strongly endorse the major recommendations described below.

In the area of management the problems of morale and confusion noted in the study are not unique to Alameda County but widespread in the field. There is an urgent need for clarification of the role of probation and agreement upon priorities by the Board of Supervisors and the courts, clearly articulated to the Department and individual staff. Personally, I am in total agreement with the statements "...the overriding priority of probation services should be the protection of the community. ...However, we also recognize the importance of insuring the availability of services to probationers who have the desire to succeed on probation and who need assistance to gain access to community resources." (Page 13).

In adult investigation the widespread use of plea/sentence bargaining severely restricts the utility of the pre-sentence report. "Pre-plea" reports, prior to any plea and sentence agreement, would increase the protection to the community by providing full information as to the offender's background and circumstances.

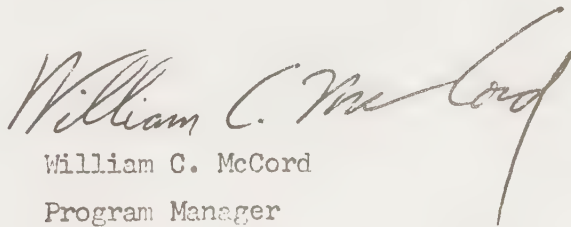
Matthew Golden
May 19, 1977
Page 2

In the area of adult supervision a follow-up of 330 cases is presented in Table 2 (page 165). The report understates the significance of this data which indicates that the outcome of cases wherein the emphasis was primarily direct monitoring was markedly more often favorable than in cases where the emphasis was primarily counseling. Direct monitoring resulted in completion of probation with no technical violations or new offenses in 45% of the cases compared to 32% of those receiving primarily counseling. Only 29% for those receiving direct monitoring failed on probation compared to 36% of those receiving counseling. The middle group of those with conditional success, completing probation despite technical violations and/or new offenses, totaled only 26% for those under direct monitoring but 32% of those receiving counseling. In my own experience as a unit supervisor for eight years in another agency, "counseling" has often been more of an attitude than a skill or service, an attitude of permissiveness and over-identification with the offender, to the neglect of the protection of society. Therefore the above data is not surprising to me.

The recommendations for classification of probationers, "banking" of lower risk cases, team supervision, and intensive direct monitoring during the first six months of higher risk cases is a coherent plan for effective case management. The shift from personal caseloads to pooled caseloads and the specialization of services within the team will decrease the over-identification of some staff and permit assignment of staff to tasks most appropriate to their skills and interests.

In summary, I am in full agreement with the overall findings, conclusions, and recommendations of this report.

Sincerely,


William C. McCord
Program Manager

Member: Technical Advisory Group / Probation Evaluation

WCM:bc



OFFICE OF THE PUBLIC DEFENDER

ALAMEDA COUNTY COURTHOUSE
1225 FALLON STREET
OAKLAND, CALIFORNIA 94612
874-5353

JAMES C. HOOLEY - PUBLIC DEFENDER

May 18, 1977

Matthew J. Golden
Director
Office of Program Evaluation
QIC: 20105

Dear Mr. Golden:

I read the Probation Department Evaluation, thoroughly, and discussed one aspect of it with the Public Defender, James C. Hooley. Mr. Hooley categorically will not allow Public Defender clients to be interviewed by the Probation Department until after there has been a plea or finding of guilt.

Both Mr. Hooley and I, feel that the attorney-client relationship demands complete candor between the client and attorney and that there must be no intrusion by any other party. When in the opinion of the client, with the advice of his attorney, a pre-plea report is desirable, then there is authority in 131 CCP to cover such a situation.

The same objections apply with equal force to the adoption of any pre-plea report system, which would attempt to secure signed releases from the client for confidential information or to interviews by the Probation Department with a victim/witness. Merely eliminating the Probation Department pre-plea interview would not satisfy this objection.

Thank you for this opportunity to comment on the study. If there are further questions I can answer, please feel free to call on me.

Sincerely,

JAMES C. HOOLEY
PUBLIC DEFENDER

Keith A. Kellum

Keith A. Kellum
Assistant Public Defender

KAK:kaz

CITIZENS FOR LAW AND ORDER, INC.

"dedicated to the maintenance of law and order"

BOX 13131 • STATION E • OAKLAND, CALIF. 94661 • (415) 339-1113

May 19, 1977

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Mr. Mathew J. Golden, Director
Office of Program Evaluation
1221 Oak Street, Room 458
Oakland, CA 94612

Dear Mr. Golden:

Please accept my apology for not attending the Wednesday meeting. We are a volunteer organization and the demands upon our time are tremendous, with the writer making more than 15 talks to organizations as far distant as Quincy and Monterey, within the past month.

Our comments will be brief as we are not professional probation people nor do we represent ourselves to be experts in the field. Our views will be those of lay persons and in the hundreds of talks made within the past seven years, we find our views to coincide closely with those of the average citizen.

In no way could we possibly digest all of the material you sent us.

Citizens For Law and Order disagrees with the following findings of the Report:

(1) That the Board of Supervisors in consort with representatives of the Superior and Municipal Courts determine what the primary business of the probation department should be. The County Board of Supervisors is not a body of experts in probation and called upon this Ad Hoc Committee to come up with specific recommendations from which they could choose—not a challenge to determine the primary business of the probation department. The primary purpose should be a matter of law.

(2) We disagree that Plea and Sentence Bargaining is a reality of our criminal justice system and the reasons for its existence are compelling. To the contrary, Plea and Sentence Bargaining are a disgrace to our criminal justice system and have never been authorized by the State Legislature. A quick study of these procedures will disclose that the primary individual in any crime, the victim, is completely ignored and excluded from any participation in Plea or Sentence Bargaining. Plea and Sentence Bargaining have been abolished in Fresno County and can be abolished over a period of time in even the largest counties of our state. It may be necessary for CLO, or some other group, to resort to the Initiative Referendum to accomplish this.

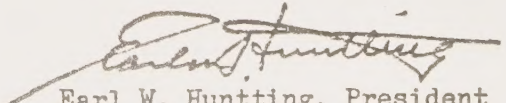
(3) CLO has some specific recommendations, couched in lay language:

(a) Probation has been a failure since no probation officer, manager, or whatever term is used, can supervise probationers on a time allotment of 34 minutes per probationer, per month. Criminal Court judges fail to revoke probation, except in the case of a very few judges, and often grant additional layers of probation to those already on probation. CLO has maintained such documentation for more than 6 years.

- (b) We recommend that where justified, probation be granted once, and then never in the case of a serious crime of violence against the person.
- (c) We recommend that probation periods by the courts be limited to realistic periods, not to exceed 3 years. The 4, 5, and 10 year probation periods currently being imposed in Alameda County are completely unrealistic, unworkable and, costly to the taxpayers.
- (d) We recommend that intensive probation supervision be given within the first several months of probation and then that probation services be given only upon application of the probationer.
- (e) We recommend that when a probationer commits a new crime, and is convicted, that he be required to serve out the unexpired period of the term for which he was granted suspension or probation in addition to any new term imposed for the new crime. At the present time there is little disadvantage in violating probation.
- (f) We agree with the statement that many probation reports are not genuinely considered by sentencing judges and that some officers of the court do not treat probation reports with seriousness.
- (g) We feel that numerous probation reports are hastily written and nothing short of being ridiculous such as "since the prosecution and the defense have agreed upon a county jail sentence, the probation department recommends an appropriate county jail sentence". Or, "Despite the fact that the defendant has a long history of crime and it is not believed he can make it except in a supervised institution, it is nevertheless our recommendation that probation be granted under the following terms and conditions—" These are actual recommendations from Alameda County Superior Court cases.
- (h) We believe the probation reports are public information and there is no legitimate reason for their being sealed after 30 days from date of sentencing. We charge that the Alameda County Clerk is acting illegally in not placing probation reports in case files for the first 30 days, instead placing a form stating that the probation report is sealed under provisions of the penal code, when such is not the law, during the first 30 days after sentencing. We wish to add we have not been refused permission to see probation reports during that 30 day period, upon demand, but most citizens do not realize they have the right to view these reports and that the form placed in the file is illegal, as it does not state the true facts.

We were disappointed in the lack of participation by judges selected for this committee. We also feel that more non-professional individuals should have been appointed to this committee, such as former members of the Grand Jury who have been made acquainted with the probation practices of this county.

Sincerely,


Earl W. Huntting, President
Citizens For Law & Order, Inc.

EWH:ps

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